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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES
AND DEPARTMENT OF CORRECTIONS

In the Matter of the Proposed
Permanent Rules (Umbrella Rule)
Governing the Licensure and
Certification of Residential Treatment
and Detention Facilities and Foster
Care for Juveniles, (Chapter 2620)

REPORT OF THE
ADMINISTRATIVE LAW JUDGE

Public hearings in this matter were held before Administrative Law Judge Allan W. Klein on February 11 through 13, 2003 in St. Paul, Minnesota. The hearing on February 13 included testimony by videoconference from Bemidji, Moose Lake, Willmar, Worthington and Saint Peter. The hearings continued until all interested persons, groups and associations had an opportunity to be heard concerning the proposed rules.

The hearings and this report are part of a rule-making process that must occur under the Minnesota Administrative Procedure Act[1] before an agency can adopt rules. The legislature has designed this process to ensure that State agencies have met all the requirements that Minnesota law specifies for adopting rules. Those requirements include assurances that the proposed rules are necessary and reasonable, that they are within the agency's statutory authority, and that any modifications to the proposed rules made after their initial publication do not result in rules that are substantially different from those which were originally proposed.

The hearings are intended to allow the agency and the Administrative Law Judge to hear public comments regarding the impact of the proposed rules and what changes might be appropriate. The Administrative Law Judge is employed by the Office of Administrative Hearings, an agency independent from the Departments of Corrections and Human Services.

Teresa Meinholz Gray, Office of the Attorney General, NCL Tower, Suite 900, 445 Minnesota St., St. Paul, MN 55101-2130, appeared on behalf of the Department of Human Services (hereinafter, "DHS") and the Department of Corrections (hereinafter, "DOC") for all hearings. Others representing the departments at the hearings were Robert Klukas, Larry M. Burzinski, Deborah Beske Brown, and David Johnson. Overall, approximately 140persons attended the hearings, and 113 attendees signed the hearing registers.

After the hearing ended, the Administrative Law Judge kept the record open for the maximum 20 calendar days, until March 5, 2003, to allow interested persons and

the departments an opportunity to submit written comments. The departments suggested numerous changes in response to public comments. Following the initial comment period, the Administrative Procedure Act requires that the hearing record remain open for another five business days to allow interested parties and the departments to respond to any written comments. The Departments filed additional comments and recommended a few additional changes. The hearing record closed for all purposes on March 12, 2003.

SUMMARY OF CONCLUSIONS

1. With only a few exceptions, the departments have demonstrated that all of the proposed rules, as amended by the numerous changes proposed by the departments , are needed and reasonable. There are no procedural problems that prevent these rules from being adopted. The modifications to the rules are not substantially different from the rules as published in the *State Register*.

2. Proposed rules relating to the frequency of medication records review and cooperation with agency personnel must be revised to remove excessive vagueness. See Findings 64 and 118.

3. The proposed rule relating to same-sex nighttime supervision contains a drafting error that must be corrected in order to make it reasonable. See Finding 77.

Based upon all of the testimony, exhibits and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. In 1994, the Minnesota Legislature established the Task Force on Juvenile Programming, Evaluation and Planning.[2] This task force prepared a report calling on the DHS and DOC to adopt joint common licensing standards for juvenile residents. Subsequently, two Task Force members, Senator Jane Ranum and Representative Mary Murphy, authored 1995 legislation committing the two departments to jointly adopt licensing and programming rules for the secure and nonsecure residential treatment facilities for juvenile residents.[3]

2. On August 28, 1995, the departments published a Request for Public Comments on the proposal to adopt rules establishing common licensing standards for residential placement of children. The proposalto adopt these common standards was placed in the State Register at *20 State Register 405.*[4] Identified in the notice were proposal objectives, rule development procedure and strategy, issues to be considered, identification of likely affected persons or groups and a request for information and opinions concerning the subject matter of the proposal.[5]

3. As part of the rule development process, the departments established a Rule Advisory Committee (hereinafter, “Advisory Committee”), which grew to

approximately 60 persons consisting of Human Services and Corrections experts and other groups or individuals who are representative of the population of the state and the children served by these programs.

4. By the summer of 1997 the Advisory Committee had arrived at a Draft Rule (hereinafter, the "Umbrella Rule"). The departments then held various public meetings around the state in effort to seek comments from all interested persons, including input from professional associations, counties, trade groups and underrepresented minority communities.

5. The Umbrella Rule was redrafted on the basis of comments received in the public meetings. The rule was then reviewed by the two departments, and differences between them were resolved.

6. In response to 1999 legislative requirements, the Umbrella Rule was changed to add Treatment Foster Care Standards.[6] Additionally, a section on Foster Care Residence Settings was added to recognize that some foster care is not provided by family foster care homes, but rather by foster parents and staff who are employed to care for foster children.

7. On December 6, 2002, the Umbrella Rule (Chapter 2960) was approved for publication in the State Register by Robert P. Kittel, Assistant Deputy Revisor, Minnesota Office of the Revisor of Statutes.[7]

8. By a letter dated December 13, 2002, the departments requested that the Office of Administrative Hearings schedule rule hearings and that the Office of Administrative Hearings review the additional Notice plan.[8]

9. In a letter dated December 19, 2002, Administrative Law Judge Allan W. Klein approved the Dual Notice.[9]

10. On December 23, 2002, the Statement of Need and Reasonableness (hereinafter, "SONAR") was completed by the departments.[10]

11. On December 20, 2002, and December 23, 2002, the departments of Human Services and Corrections, respectively, ordered the Notice of Hearing to adopt the Umbrella Rule.[11]

12. On January 3, 2003, the Department of Human Services sent the Statement of Need and Reasonableness to the Legislative Reference Library.[12] The SONAR and the Notice of Intent to Adopt Rules were made available to the public at this time.[13]

13. On January 3, 2003, the departments mailed the Notice of Intent to Adopt Rules to all persons and associations who had registered their names with the departments for the purpose of receiving such notice and to all persons identified in the additional notice plan.[14] At this time, the departments also certified the accuracy of its mailing list. [15]

14. On January 3, 2002, the departments mailed the Notice to Adopt Rules and the SONAR to certain Legislators pursuant to Minnesota Statutes, section 14.116.[16]

15. On January 6, 2003, the Notice of Hearing was published in the State Register at *27 State Register 1037.*[17]

16. At the start of the February 11, 2002 hearing, the following documents were placed in the record:

A. The first Request for Comments published in the State Register.[18]

B. The proposed rule, as approved by the Revisor of Statutes.[19]

C. The Statement of Need and Reasonableness (SONAR).[20]

D. A copy of the certificate and transmittal letter showing that the agency sent a copy of the SONAR to the Legislative Reference Library.[21]

E. The Notice of Hearing as mailed.[22]

F. The Notice of Hearing published in the State Register.[23]

G. Certificate of Mailing the Notice to the DHS mailing list.[24]

H. Certificate of Mailing the Notice to the DOC mailing list.[25]

I. Certificate of Accuracy of the Mailing List with the Mailing List attached.[26]

J. Letter requesting prior approval of the departments' additional Notice plan with a letter from the Administrative Law Judge approving the departments' additional Notice plan.[27]

K. Mailing lists used to provide notice to persons pursuant to the departments' additional Notice plan.[28]

L. Written comments on the proposed rule received by the departments during the comment period.[29]

M. Certificate of Mailing Notice to Legislators.[30]

Nature and History of the Proposed Rules

17. The rules governing the licensure and certification of residential treatment and detention facilities and foster care for juveniles are a blend of several existing DHS and DOC rules with differing administrative provisions.[31] At the behest of the legislature, the departments concluded that a single administration chapter was needed to provide uniform standards to govern the entire licensure and certification of

residential treatment and detention facilities, and foster homes, and add a new certification category for programs that offer transitional services.

Statutory Authority

18. The proposed Umbrella Rule is required by laws adopted during the 1995 legislative session. Laws of Minnesota 1995, Chapter 226, Article 3, Section 60 provides in pertinent part:

> The commissioners of corrections and human services shall jointly adopt licensing and programming rules for the secure and nonsecure residential treatment facilities that they license and shall establish an advisory committee to develop these rules. The committee shall develop consistent general licensing requirements for juvenile residential care, enabling facilities to provide appropriate services to juveniles with single or multiple problems.

Laws of Minnesota 1995, Chapter 226, Article 3, Section 51 requires that the commissioners of corrections and human services jointly adopt licensing rules which require license holders to have operating policies for the continued use of secure treatment placement. Laws of Minnesota 1995, Chapter 226, Article 3, Section 50 requires the commissioners of corrections and human services to jointly amend licensing rules to allow residential facilities to admit 18- and 19-year old extended jurisdiction juveniles (EJJ) and to develop policies which would be approved by the commissioner regarding separate programming and housing for residents based on the age of the residents.[32]

19. Under these statutes, the departments have the necessary statutory authority to adopt the proposed rules.[33]

Regulatory Analysis

20. The Administrative Procedure Act requires an agency adopting rules to discuss six factors in its statement of need and reasonableness. Each factor will be dismissed individually.

> (1) A description of classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The departments identified affected persons as including all children who receive or may receive licensed children's or juvenile residential care or treatment and their families, and all persons, agencies or organizations, both public and private, who serve these children and their families.[34]

> (2) The probable costs to the agency and any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The departments indicated that implementation and enforcement of the proposed rules will result in one-time costs, including training for license holders.[35] DOC estimated its costs at $25,000 for training.[36] DHS estimated its training costs at $30,000.[37] DHS also estimated its ongoing enforcement at approximately $75,000, mostly for the employment of one additional investigator to handle the anticipated increase in reports of maltreatment.[38] DHS also noted that there would be an increase in fees arising from newly certified or licensed programs, but no estimate of the newly generated revenue could be made.[39] No costs were anticipated to be incurred by other agencies.

> (3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.
>
> (4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and reasons why they were rejected in favor of the proposed rule.

The departments dealt with these two requirements together. They assessed the rule as proposed and determined that the adoption of the proposed Umbrella Rule is the only method that meets the requirements of the legislation.

> (5) Probable cost of complying with the proposed rule.

The departments examined the rule on a part-by-part basis and concluded that additional costs would be incurred by license holders through the redrafting and printing of resident handbooks, employment of interpreters, replacement of mattresses that are not fire-retardant, training of new employees to orient them to the rules governing detention facilities, and remodeling of some foster homes.[40] In each case, the departments noted that the costs are almost impossible to quantify, but that the costs are not expected to be significant. For treatment foster care services, the departments indicated that costs are likely to be reduced by the standardization of practices for these services and the institution of eligibility standards for such services.[41]

> (6) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

The departments indicated that there are no federal regulations governing the licensure and certification of residential settings for children and juveniles.[42] Thus, there are no rule provisions that differ from the federal regulations. During the hearing, however, it became apparent that there are certain requirements that must be satisfied in order for residents to qualify for various categories of federal funding, such as Medicaid. But these are not federal rules that directly regulate the licensing or operations of facilities in the same sense that these state rules regulate them.

21. The Administrative Procedure Act also requires an agency to describe how it has considered and implemented the legislative policy supporting performance based regulatory systems. A performance based rule is one that emphasizes superior

achievement in meeting the agency's regulatory objectives, but gives maximum flexibility to the regulated party and the agency in meeting those objectives. The departments, *inter alia,* considered and implemented performance based standards which emphasize superior achievement in meeting the agency's regulatory objectives and allowed the license holder the appropriate flexibility in meeting the agency's regulatory objectives.[43]

22. In addition to the mailed and published notices required by statute, the departments published the proposed rules, the SONAR, and Notice of Intent to Adopt on their websites. The Departments also mailed a Notice of Intent to Adopt to all officials from other cities, towns and counties who need to be aware of the rules as they apply to licensure and certification within their jurisdiction.

Rulemaking Legal Standards

23. Under Minn. Stat. § 14.14, subd. 2, and Minn. Rule 1400.2100, a determination must be made in a rulemaking proceeding as to whether the agency has established the need for and reasonableness of the proposed rule by an affirmative presentation of facts. In support of a rule, an agency may rely on legislative facts, namely general facts concerning questions of law, policy and discretion, or it may simply rely on interpretation of a statute, or stated policy preferences.[44] The departments prepared a Statement of Need and Reasonableness in support of the proposed rules. At the hearing, the departments primarily relied upon the SONAR as the affirmative presentation of need and reasonableness for the proposed amendments. The SONAR was supplemented by comments made by representatives of the departments at the public hearing and in written post-hearing submissions.

24. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.[45] Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.[46] A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.[47] The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."[48] An agency is entitled to make choices between possible approaches as long as the choice made is rational. Generally, it is not the proper role of the Administrative Law Judge to determine which policy alternative presents the "best" approach since this would invade the policy-making discretion of the agency. The question is rather whether the choice made by the agency is one that a rational person could have made.[49]

25. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the rule adoption procedure was complied with, whether the rule grants undue discretion, whether the agency has statutory authority to adopt the rule, whether the rule is unconstitutional or illegal, whether the rule constitutes an undue

delegation of authority to another entity, or whether the proposed language is not a rule.[50] In this matter, the departments have proposed numerous changes to the rule after publication of the rule language in the State Register.[51] Because of this circumstance, the Administrative Law Judge must determine if the new language is substantially different from that which was originally proposed.[52]

26. The standards to determine if new language is substantially different are found in Minn. Stat. § 14.05, subd. 2. The statute specifies that a modification does not make a proposed rule substantially different if "the differences are within the scope of the matter announced … in the notice of hearing and are in character with the issues raised in that notice," the differences "are a logical outgrowth of the contents of the … notice of hearing and the comments submitted in response to the notice," and the notice of hearing "provided fair warning that the outcome of that rulemaking proceeding could be the rule in question."[53] In determining whether modifications make the rules substantially different, the Administrative Law Judge is to consider whether "persons who will be affected by the rule should have understood that the rulemaking proceeding … could affect their interests," whether "the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the … notice of hearing," and whether "the effects of the rule differ from the effects of the proposed rule contained in the … notice of hearing."[54]

ANALYSIS OF THE PROPOSED RULE

27. This report is limited to discussion of the portions of the proposed rules that received significant comment or otherwise need to be examined. When proposed rules drew no comment and are adequately supported by the SONAR or the departments' oral or written comments, a detailed discussion of them is unnecessary. Instead, the Administrative Law Judge now finds that the agency has demonstrated the need for and reasonableness of all the rule provisions not specifically discussed in this report. All the rule provisions not specifically discussed in this report are found to be authorized by statute, and there are no other problems with them that would prevent their adoption. Changes to them have not caused them to be "substantially different."

RULES APPLICABLE TO ALL FACILITIES

Part 2960.0020 – Definitions.

28. Gothriel LeFleur on behalf of Hennepin County Community Corrections suggested the addition of the following definition to this section.

"Correctional Placement. Any placement that takes place following an adjudication of delinquency which has as its purpose, attempting to modify the behavior and circumstances that resulted in the adjudication."[55]

The departments find no reason to include this definition since this term is not found anywhere in the rule and the term itself is not ambiguous.[56] The Administrative

Law Judge finds the departments' decision to not define "correctional placement" reasonable.

29. Jon Brandt and others recommended the rule define the term "medically licensed person".[57] Included in the definition physician, physician assistant, RN, LPN, and nurse practitioner should be listed. The departments agree that the term "medically licensed person" should be defined in this section as follows: **"Medically licensed person** means a person who is licensed or permitted by a Minnesota health related board to practice in Minnesota, and is practicing within the scope of the person's health related license."[58] The definition would work to replace those terms in the rule that refer to persons in specific categories of medically licensed practice. The Administrative Law Judge finds that the departments' definition of "medically licensed person" and its use to refer to persons in specific categories of medically licensed practice referred to throughout the rule is reasonable. The addition is not a substantial change but merely clarifies the term. The definition does not create a new requirement.

30. Jon Brandt and others expressed concern over the term "parent" with respect to notification requirements pertaining to the 18 years or older resident.[59] The departments agree that the term "parent" needs defining as a means of clarifying the obligation the license holder has with respect to notifying a parent of an 18 years or older resident.[60] The definition of "parent" reads as follows: "Parent means the parent, with parental rights, or guardian of a resident under 18 years of age." The Administrative Law Judge finds the departments' proposed definition of "parent" reasonable. The definition's purpose is merely for clarification and does not create a new requirement thus does not present a substantial change to the rule.

31. Subpart 6. Basic Services. Mr. LeFleur further suggested adding "education" to the definition under this heading.[61]

The departments found in its post-hearing response that it is the role of the school not the license holder to provide education as a basic service.[62] The Administrative Law Judge finds the departments' decision to exclude "education" from this section is reasonable since education does not fall under the scope of the license holder's responsibilities.

32. Subpart 15. Chemical irritant. Mr. LeFleur requested clarification in this subpart as to what chemical irritants have been approved by the Department of Health.[63] The departments agreed to remove the phrase "approved by the Department of Health" from the definition since, in fact, there is no approved chemical irritant list from the Department of Health.[64] The Administrative Law Judge finds the removal of the above language by the departments is reasonable. The removal does not render the rule "substantially different" from the original proposal.

33. Subpart 22. Correctional program services. Mr. LeFleur commented that the second sentence should be eliminated from the definition "correctional program services" as meaningless and inaccurate.[65] The departments agreed to eliminate the

sentence as a means of clarifying the definition.[66] The Administrative Law Judge finds the departments' deletion of the second sentence from the definition "correction program services" is reasonable. The change is not substantial.

34. Subpart 40. House parent model. Mr. Jon Brandt commented that the definition of house parent model should include programs with "shift staff, respite staff, and professional support staff."[67]

The departments do not agree, and support the rule as originally proposed. The definition proposed by Mr. Brandt would include "staffing configurations so broadly stated as to include almost any configuration" and the house parent model would lose its homelike feel and turn into something resembling more institutional in atmosphere. The departments in their SONAR reasoned that the definition is commonly accepted and understood in the treatment field.[68] The Administrative Law Judge finds that the departments' decision to refrain from changing the language of this definition to include programs with "shift staff, respite staff, and professional support staff" is reasonable. Maintaining the integrity of the houseparent model depends to some extent on the size and staffing configurations present. By changing the environment of the houseparent model by allowing such broad staffing configurations, the houseparent model is at risk of losing its individuality.

35. Subpart 57. Program director. Mr. LeFleur noted that there is a faulty distinction between rehabilitation and corrections programs.[69] He suggested Program Director be reworded as "an individual who is designated by the license holder to be responsible for the overall operations of a residential program as defined in subpart 62." The departments agree that the definition would be improved by the use of the word "residential" in place of "rehabilitation or corrections". [70] The Administrative Law Judge finds the departments' proposed change to replace "rehabilitation or corrections" with "residential", that the definition, with is reasonable. The change is not substantial, but merely clarifies the definition of program director.

36. Subpart 59. Resident. The proposed rule reads as follows "Resident means a person under 18 years old, or under 19 years old and under juvenile court jurisdiction, who resides in a program licensed or certified by parts 2960.0010 to 2960.0710." Jon Brandt on behalf of Mapletree, suggested changing the language to include "or under 20 years old as provided for under section 245A.04, subd. 11, or under 21 years old under juvenile court jurisdiction…"[71] Mr. Brandt commented that there are individuals that are 18, 19, and 20 who are still under court jurisdiction and eligible for placement. The departments declined to make any changes to the proposed rule.[72] There are, unfortunately, a number of conflicting statutes that impact this age question. One of the statutes that caused these joint rules (referred to in Finding 18, above) requires the two commissioners to jointly amend licensing rules to allow residential facilities to admit "18 and 19 year old extended jurisdiction juveniles."[73] The departments have chosen to follow the first two of the cited statutes, and limit the definition of "resident" to 18 year olds and 19 year olds who are EJJ children. The Administrative Law Judge finds that the departments have justified the reasonableness of the definition of resident as it appears in the proposed rule.

37. Subpart. 62. Residential program. The proposed rule reads as follows "Residential program means a program that provides 24-hour-a-day care, supervision, food, lodging, rehabilitation, training, education, habilitation, or treatment for a resident outside of the resident's home." Mary Ford on behalf of NACAC commented that the definition of residential program should include the phrase "including family reunification services" as one of the program services.[74] The departments support the rule as originally proposed. The departments further comment that it is the task of the placing agency to determine whether family reunification with be involved as part of the individual's treatment program-it is not a presumption that all residents will be reunited with their family.[75] Family reunification may or may not be part of an individual's treatment program. The Administrative Law Judge finds the departments' support of the original rule language in this subpart reasonable.

38. Subpart 65. Seclusion. The original proposed rule reads as follows: "Seclusion means confining a person in a locked room". Mr. LeFleur requested a modification of the language of this definition to read "Seclusion means confining a person to a locked room at times other than nighttime sleeping hours."[76] The departments support the original proposed language of the rule and do not suggest any further change.[77] The Administrative Law Judge finds the departments' decision to maintain the language of the original proposed rule is reasonable. It does not seem out of the realm of possibility that seclusion may take place during "nighttime sleeping hours" depending on the circumstances surrounding the situation, such as disruption of other residents during these hours, for example.

39. Subpart 71. Target population. The proposed rule reads as follows "Target population means youth experiencing special problems who have specific characteristics that require residential program services." Mary Ford commented that the definition of target population should emphasize the needs of the residents in the facilities rather than the characteristics.[78] The departments agreed to change the proposed rule by supplanting the word "characteristics" with the word "needs". [79] The Administrative Law Judge finds the change reasonable. The change is not substantial, and merely clarifies the definition of target population.

40. Subpart 73. Time-out. Mr. LeFleur commented that this definition should be modified to read: "Time out means a treatment intervention in which a caregiver trained in time out procedures removes a resident from an ongoing activity to a locked or unlocked room, depending on safety considerations of staff and residents, or other separate living space that is safe and where the resident remains until the precipitating behavior stops."[80] The departments did not accept this recommendation for change and believed the proposed language should remain as proposed: "Time-out means a treatment intervention in which a caregiver trained in time-out procedures removes a resident from an ongoing activity to an unlocked room or other separate living space that is safe and where the resident remains until the precipitating behavior stops."[81] The Administrative Law Judge finds the decision by the departments to keep the definition of "time-out" as originally proposed is reasonable. The intent and meaning of the definition is not to encompass when it is appropriate to use a time-out, but rather the

objective is to simply define and characterize the concept of "time-out" as it may apply in a residential setting. Putting too many substantive provisions in a definition makes for a user-unfriendly rule system. It is better to keep the definitions brief and clear, and put the substantive provisions in a separate rule.

Part 2960.0030. Administrative Licensing.

41. Subpart. 2. Application and license requirements. Item B (3) reads as follows "A program operating in Minnesota which has headquarters outside of the state must provide the name of the state license holder." Mary Ford suggested that the word "in-state" be substituted for "state" in the definition with respect to the state license holder.[82] The departments agreed to clarify by substituting the word Minnesota for the word state in the definition with respect to the state license holder.[83] The Administrative Law Judge finds the substitution of "in-state" for "Minnesota" reasonable. The change is not substantial and clarifies the rule and avoids confusion.

42. Item B (6) sets forth requirements for community evaluation of the residential facility. This analysis must include neighborhood demographics, racial and socio-economical characteristics, proximity to public and private facilities and organizations such as schools and daycare providers. Mr. LeFleur commented that this section of the proposed rule is unnecessary, and financially burdensome.[84] The departments responded that this section to the proposed rule is not unreasonable because the licensed programs likely know the community characteristics[85] and it should not be burdensome or unreasonable for the license holder to fill out the license application with such information that they are already privy to. Lastly, the departments note that Minnesota Laws, 1995, Chapter 226, article 3, section 60, subdivision 2, (1) (i) makes community interests a concern of license holders by requiring them to establish a representative board or advisory committee. The Administrative Law Judge finds the departments have demonstrated the need and reasonableness of the proposed rule.

43. Mr. Larry Molstad, on behalf of Hennepin County Children, Family, & Adult Services questioned how providers were notified of the hearings for this rule.[86] The departments sent a Notice of Hearing to all residential facility license holders who are either DHS or DOC licensed.[87] Mr. Molstad also questioned whether DOC and DHS were allowed to serve the same population.[88] The departments responded by indicating that the license holder is given the opportunity to choose which services to offer and which population to serve.[89] The departments reason "that giving the license holder flexibility to determine what function the facility will serve is better than narrowly defining the license holder's service options."

44. Subpart. 6. Variance standards. The proposed language reads as follows" "Variance standards. An applicant or license or certificate holder may request, in writing, a variance from a rule requirements that do not affect the health, safety, or rights of persons receiving services." Mary Ford requested that the language to this proposed rule be changed to read as follows: "An applicant or license or certificate holder may request, in writing, a variance that is equal or superior to existing rule standards, and that do not affect the health, safety, emotional and developmental

needs, or rights of persons receiving services."[90] The departments do not support the proposed change made by Ms. Ford.[91] The departments reasoned that the variance standards are similar to the variance standards in part 9543.1020, subpart 5 and are consistent with the requirements set forth in Minnesota Statutes, section 245A.04, subdivision 9. The Administrative Law Judge finds the original language of the proposed rule is reasonable.

Part 2950.0050 - Resident Rights and Basic Services.

45. Subpart. 1. Basic rights. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Associates, suggested a minor language change for item J.[92] The departments have adopted it, and it is found to be non-substantial.[93] For Item M, Mr. Benjamin proposed the following language change: "except in Detention facilities the right to retain and use a reasonable amount of personal property."[94] The departments declined to change the proposed rule. The departments agree that detention programs need the ability to decide on what is a "reasonable amount and use of personal property."[95] But the departments believe the rule, as originally proposed, allows detention facilities (and all other facilities) to adopt policies that meet their needs. The departments do not want to adopt Ms. Benjamin's suggestion because they fear it will limit the ability of other, non-detention facilities to adopt reasonable policies. The Administrative Law Judge finds that the departments have justified the reasonableness of the proposed rule. Every facility may make determinations on the "reasonable amount and use of personal property" as the particular facility and circumstances may present.

46. Subpart. 3. Basic rights information. Mr. Benjamin requests a language change to item B.[96] The change is requested to eliminate unnecessary mailings of information that the parents or guardian may not want. Mr. Benjamin explains that short lengths of some stays would make such mailings very difficult. The change will allow the license holder to notify the parents or guardian that this information is available upon request. The departments agree to change the proposed rule as follows: "The license hold must tell the resident's parent, guardian, or custodian within a reasonable time after admission to the facility that the information in item A is available."[97] The Administrative Law Judge finds the change reasonable and not substantially different from the rule as originally proposed.

47. Mr. Benjamin requests a language change to item E by removing all references to state-appointed ombudsman or designated grievance authority.[98] Mr. Benjamin commented that the state appointed ombudsman office has been eliminated since 2000. The departments disagree with Mr. Benjamin's suggestion, noting that the ombudsman's resources are still available, although diminished.[99] The Administrative Law Judge finds the departments' decision to retain the language of this subpart reasonable.

Part 2960.0060 - Program Outcomes Measurements, Evaluation and Community Involvement

48. Subpart 2. Outcome measures. Mr. Benjamin commented that the section should be changed to eliminate the power of the commissioners to direct license holders to measure specific factors relating to outcomes.[100] The departments do not agree with the suggested change, citing Minnesota Statutes, section 241.021 and Chapter 245A, and Minnesota Laws 1995, Chapter 226, article 3, section 60, subdivision 2, paragraph (1) (iii), which grants authority to the commissioner to promulgate rules requiring data collections.[101] The departments explained that outcome measures are significant as a means of evaluating a treatment approach and determining whether that approach has produced a wanted outcome. The Administrative Law Judge finds the departments' decision to keep the rule as originally proposed reasonable.

49. Ms. Regan commented that these sections of the proposed rules will not fit well with the existing MCCCA demographic data system.[102] The departments commented that the rule was not intended to "help or hinder" a third party's demographic data system.[103] Ms. Gibson Talbot commented that the costs of the updating demographic data systems to implement the proposed rule requirement would be cost prohibitive, and suggests that legislative appropriations be made.[104] The departments responded that they did not know what costs, if any, would be needed to update all of the various systems.[105] The Administrative Law Judge finds the original language has been justified as reasonable because of the importance of measuring outcomes. However, the departments should be sensitive to the costs to providers, and consider measures such as gradual phase-ins, to mitigate the impacts. In the alternative, it may be possible for the departments to negotiate some sort of contract with MCCCA so that the departments' needs could be met by a revised version of the MCCCA system that would be less expensive than having two overlapping systems.

50. Subpart 3. Program evaluation. This part of the rule sets forth seven types of performance indicators the license holder must use to evaluate the program's strengths and weaknesses. These indicators include accidents; the use of restrictive procedures; grievances; adverse findings, allegations of maltreatment under Minnesota Statutes section 636.556, citations, and legal actions against the license holder; results of a resident and family satisfaction survey required in part 2960.0140, subpart 1; information from, subparts 1 and 2; and critical; incidents. One criticism noted by Mary Ford of NACAC is that the criteria should include additional evaluation measures to record the progress of the program.[106] She requested that the following language be added: "Percentage rate of residents successful in completing their treatment plans; length of stay; number of residents ejected from the program; rate of residents moved to less restrictive placement; rate of residents maintaining or developing significant family connections while in the facility; and rates of adoption or family reunification." Todd Benjamin suggested changing the rule by excluding detention facilities from the survey requirement.[107] According to the departments' SONAR the inclusion of subpart 3 is

based in the necessity to have license holders consistently evaluate the strengths and weaknesses of their program "as part of an ongoing internal program evaluation and quality assurance effort, because it is consistent with chapter 2960's enabling legislation."[108] The departments in their post-hearing response to the comments noted that some of the proposed changes suggested by Ms. Ford were redundant and already covered by subparts 1 and 2 and by section 2960.0140.[109] The departments support the proposed rule as originally worded for the reasons stated in the SONAR. The departments further disagree with exempting detention facilities from the survey requirement citing Minnesota Laws 1995, Chapter 226, article 3 section 60, subdivision 2, paragraph (iii) which requires such a evaluative survey with respect to client and family satisfaction. [110] Furthermore, such a survey is significant because it allows the facility to measure the quality of services it is providing according to the departments. The Administrative Law Judge finds that the departments' SONAR adequately supports the rule as originally proposed. The inclusion of detention facilities in the survey requirement is required by statute.

Part 2900.0070 – Admission Policy and Process.

51. Subpart 2. Admission Criteria. Subpart 2, items B and C deal with the appropriate placement of females and males in facilities that offer gender-specific programs. Ms. Mary Ford of NACAC suggest these requirements begin with the word "address" rather than "consider."[111] The departments cite American Heritage Dictionary as defining consider as "to think about carefully and seriously" which is the intent of the departments.[112] The departments support the original wording. The Administrative Law Judge finds that either word is acceptable.

52. Subpart 3. Resident admission documentation. Mr. Gothriel LeFleur of Hennepin County Community Corrections requests detention facilities be exempt from requiring them to describe the resident's assets and strengths and related family information.[113] The departments do not agree, asserting that detention facilities need this information to properly care for residents.[114] The Administrative Law Judge finds the departments' decision reasonable.

53. Mary Ford, on behalf of NACAC, recommended a change to this section by adding a new subitem 12 with respect to the placement agency's case plan and permanency planning goals. [115] The departments do not agree with the suggested language.[116] The departments note that there are many residents who lack case plans and often times the resident's permanency planning goals are not decided upon at the point of placement. However, the departments agree with Ms. Ford that it would be desirable to include the care plan if it exists. Therefore, the following language is suggested by the departments resulting in a new subitem (12): "(12) Placing agency's case plan goals for the resident, if available." The Administrative Law Judge finds this language reasonable and not a substantial change from the original rule.

54. Subpart 5. Resident screening. This part of the rule requires a facility to appropriately screen the resident for physical and mental health, chemical abuse,

sexual abuse, etc. Mr. LeFleur and others believe this is an unfunded mandate and facilities can't comply.[117] The departments respond that screening is necessary to protect the health and safety of residents and to determine which further assessment or treatments are necessary.[118] The departments believe that screening is already done by most facilities at admission. Ms. Jan Gibson Talbot, on behalf of Hearthstone, suggests that the rule require that the appropriate state departments first secure "the necessary personnel resources and training monies" to implement this subpart prior to resident screening being employed.[119] The departments do not agree with training funds first being established before this subpart of the rule becomes effective, noting that "[f]uture legislative appropriations are speculative and vague and in any case, are not a subject of this facility licensing rule."[120] The Administrative Law Judge finds that the rule as originally proposed is reasonable.

Part 2960.0080 Facility operational services, policies, and practices.

55. Subpart 3. Cooperation in treatment and basic service delivery**.** The proposed rule requires that the license holder cooperate with the resident's case manager and other appropriate parties in creating and delivering basic services. Additionally, the rule sets forth six tasks a license holder must accomplish.[121] Mary Ford on behalf of NACAC suggested more detailed language for subpart 3(A)"[122] The departments chose to adopt much of her suggested language change."[123] The change to subpart 3, item A is simply a clarification of the role of the license holder with respect to the activities he/she would likely undertake, and there has been no significant departure from the original proposed rule. The Administrative Law Judge finds the rule, as amended, to be reasonable.

56. Ms. Ford also suggests adding language about the future functioning of the child in a family with respect to the case plan.[124] The departments agreed, and propose to change the language of B to address her concern."[125] The Administrative Law Judge finds the rule, as amended, to be reasonable. It is not a substantial departure from the proposed rule.

57. Subpart 5. Discipline policy and procedures required. This subpart requires policies and procedures that take into account individual needs. Subitem (7) in part prohibits the use of restrictive procedures due to a shortage of staff. Mr. LeFleur commented this prohibition could hinder staff in maintaining normal program levels.[126] The departments maintain that normal program levels are not required during staff shortages and therefore restrictive procedures are unjustified for that reason.[127] In situations of staff shortages, it is reasonable that restrictive procedures not be the solution to the problem. On the other hand, the maintenance of normal program levels during such occasions ought not be required. The Administrative Law Judge finds the rule as originally proposed by the departments reasonable.

58. Item D, subitem (4) requires an unlocked room during a time-out. Mr. LeFleur requests a change to allow locked rooms.[128] The departments support the rules as proposed citing difficulty distinguishing between "time-out" and "seclusion."[129]

The definition for seclusion includes a locked room. Defining time-out as including a locked room would create a definition for time-out that is not clearly distinguishable from seclusion. If a time-out is desired to be held in a locked room, perhaps the appropriate characterization of the "time-out" should be "seclusion." The Administrative Law Judge finds the rule as originally proposed reasonable.

59. Subpart 6. Daily resident activities. This subpart directs the license holder to immediately notify the placing agency if a resident has run away or is missing. Mr. Jon Brandt of Mapletree and others asked that that notification be modified to "in a timely manner."[130] They reasoned that it is common for a resident to just come home late from school, but not be in any danger, and that social workers and probation officers do not want to be bothered by a lot of "false alarms." The departments support the original proposal since the license holder must be able to establish residents' whereabouts.[131] The Administrative Law Judge finds the departments have justified the rule as originally proposed. It is important to keep the placing agency privy to the location of the resident, and it reasonable to expect the license holder to have knowledge of the missing status of a resident.

60. Subpart 7. Culturally appropriate care. This subpart mandates care that meets the resident's cultural and racial needs of association and care. Mr. Benjamin of the Minnesota Juvenile Detention Association asks that detention facilities be exempt from parts A, B, and C.[132] The departments do not agree, citing the fact that a high percentage of residents in detention are people of color and need culturally and racially appropriate care.[133] The Administrative Law Judge finds the departments have justified the reasonableness of the rule.

61. Subpart 10. Exercise and recreation. Mr. LeFleur suggests that the term "individualized exercise " is not defined and suggests the term "appropriate recreation" instead.[134] The departments agree to the proposed substitution.[135] The Administrative Law Judge finds that the change is not a substantial difference from the original rule, and that the rule is reasonable.

62. Subpart 11. Health and hygiene services. The proposed rule requires a license holder to provide a resident with timely access to basic, emergency, and specialized medical, mental health, and dental care. Mr. LeFleur requested this be amended to include the word "emergency" before "mental health" and "dental care."[136] The departments stand by the proposed rule.[137] The change would require only emergency mental health and emergency dental care to residents, even those in long-term facilities. The Administrative Law Judge finds the rule, as originally proposed, to be reasonable.

63. Subpart 11, item D, subitem (2) requires approval to administer medication from a parent or guardian, and if denied, the medication may not be administered before a court order is issued. Mr. LeFleur commented that this requirement violates several laws.[138] Ann Nordlund, of Episcopal Community Services, suggested that this rule was medically inappropriate in cases where a drug had to be gradually withdrawn.[139] The

departments agree a change is needed in the rule, since abrupt stoppage of some medications could be harmful to the resident. Therefore, they suggest the following modification: "if permission is denied and the parent has legal right to deny permission then the medication will be discontinued under the supervision of a physician unless a court order to continue the medication is obtained." The Administrative Law Judge finds that the departments' modification of this part of the rule is reasonable. The modification allows the rule to be consistent with the legal rights of the parent, yet it considers the possible harmful affects from sudden discontinuation.

64. Item D, subitem 5 as originally proposed, reads as follows:

> *Facility staff responsible for medication assistance, other than a licensed nurse or physician, must have a certificate verifying their successful completion of a trained medication aide program for unlicensed personnel offered through a postsecondary institution, or staff must be trained to provide medication assistance according to a formalized training program offered by the license holder and taught by a registered nurse. The specific medication assistance training provided by the registered nurse to staff must be documented and placed in the unlicensed staff person's personnel records. A medically licensed person must provide consultation and review of the license holder's administration of medications at least weekly.*

Ms. Gibson Talbot suggests that the costs associated with the training of staff with respect to the medication aide program should be funded by the appropriated state department.[140] Furthermore, Ms. Gibson Talbot (and several others) suggests a monthly review of medication administrative activities rather than a weekly review as proposed by the rule. The departments in their response to the post-hearing comments declined the proposal to fund the staff training, reasoning that the "staff training should be recoverable as a cost of doing business which is reflected in the price set for the services offered by the program."[141] The departments, however, agreed to change part 2960.0080, subpart 11, item D, subitem (5) as follows: "A medically licensed person must provide consultation and ongoing review of the license holder's administration of medication and timely review of medication error." The departments have not demonstrated the reasonableness of a weekly review. However, the departments' proposed changes offer no meaningful guidance in terms of frequency. They are impermissibly vague. A number of comments suggested monthly review would be adequate, and the Administrative Law Judge would recommend monthly review to cure this defect. But whatever standard is adopted must be specific enough that persons can know how to comply.

65. Subpart 13. Resident clothing, bedding, and laundry. Mr. Saad, on behalf of Safe Haven programs, raised an issue with the part of the rule that requires an appropriately sized, clean, fire-retardant mattress.[142] He explained that the Department of Human Services does not currently require fire-retardant beds and that the cost to replace all existing beds to meet the new proposed rules would be extremely burdensome. Mr. Saad recommended that any beds approved by DHS before

December 31, 2002, or some specified date be grandfathered in. Upon replacement of these grandfathered in mattresses, then new fire-retardant ones could be required. The departments in their SONAR explained that the fire-retardant mattress requirement was proposed because it was thought to be current practice.[143] The departments agreed with Mr. Saad's proposed change in part by grandfathering the old mattresses in for a period of no more than 10 years.[144] The new language to subpart 13 would allow existing non-fire retardant mattresses may continue to be used until they are replaced, provided that the existing mattresses are replaced no later than ten years after the effective date of this rule. The departments reasoned that this ten year period should be enough time for the facilities to absorb the costs of the new fire-retardant mattresses. The Administrative Law Judge finds the rule, as amended, to be reasonable.

66. Subpart 15. Communication and Visitation. Item B of this subpart relates to restricting the visiting rights of parents of a resident. Mr. Larry Molstad on behalf of Hennepin County Children, Family, & Adult Services Department and others asked that the requirements regarding visiting policies be changed to limit visits to times that do not interfere with programming or rights of other residents.[145] Mr. LeFleur requested a visiting policy that reasonably accommodates parents' schedules.[146] The departments do not support a change the this section of the rule.[147] The departments explain in their SONAR that family involvement is crucial to a resident's treatment, and creating a visitation policy which fits with parents' schedules is important.[148] The departments explain in their post-hearing response that to limit visitation due to "on-going programming" would be unreasonable since "programming could be used to describe almost any activity at the facility."[149] The departments further reasoned that the rule as proposed grants the license holder flexibility to create a visiting policy which allows the needs of the resident and family to be met. The Administrative Law Judge finds the original rule proposed by the departments is reasonable.

67. Subpart 18. Resident and family grievance procedures. Mr. LeFleur asks that item A. should distinguish between resident grievances and family grievances.[150] He would like the rule to direct family members with grievances to write or call the Program Director. The departments support the proposal as written since the rule does not prohibit the facility from adopting a procedure that does make a distinction between resident and family grievances.[151] Mr. Todd Benjamin wishes to delete the phrase "concerned person" from the list of those who can make a complaint.[152] The departments do not agree with him, reasoning that anyone who is aware of a bad situation should be allowed to make a complaint about the resident's care.[153] The Administrative Law Judge finds the original rule is justified as reasonable.

68. Ms. Ford further suggests adding a new section 19.[154] The departments agreed, and the new subpart 19 would read as follows:

> "**Subpart 19. Family involvement**. The license holder must list procedures and program plans which are in accordance with a resident's

case plan, that facilitate the involvement of the resident's family or other concerned adult, in the resident's treatment or program activities."[155]

The Administrative Law Judge agrees with the departments' adoption of the new subpart 19 as reasonable but suggests the language be clarified. The new subpart requires family involvement procedures be listed "which are in accordance with a resident's case plan". Presumably, no procedures and plans facilitating the involvement of the resident's family would be required if, in the resident's case plan, family involvement isn't a goal. The proposed language could be read to require that family involvement procedures must be included in every case. It would be helpful to include language at the beginning of the subpart such as "If family involvement is a goal in a resident's case plan…." This addition is suggested, but not required.

Part 2960.0100 – Personnel Policies.

69. Subpart 2. Recruitment of culturally balanced staff. It is the license holder's responsibility to retain staff responsive to the cultural and racial needs of residents. If such staff cannot be retained the license holder must contact racial and community groups related to the resident's background to seek ways to provide such opportunities. Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, requests detention facilities be exempt from the requirements.[156] The departments do not support such a change because during previous hearings concerned parties felt that this was a very important requirement. In addition, current state law mandates requiring this provision.[157] The Administrative Law Judge finds that the departments have justified the original rule as reasonable.

70. Subpart 3. Orientation and in-service training. This subpart addresses the training that is required for staff. The departments in their SONAR explain that it is necessary and reasonable to provide training to staff.[158] The departments further explained that this training is updated to include changes in laws, rules and professional standards, and to maintain quality care, and this training is also required by existing rules. Training in cultural sensitivity and disability awareness is required by law. Training will aid in prevention and reduce the likelihood residents will be harmed in emergency situations. Staff must also be knowledgeable about the pertinent and proper release of information about the resident. Ms. Ford suggested a new subitem to the group of six subitems—"best practice approaches pertaining to the residential care of children, including involvement of the resident's family or another caring adult in program activities and treatment."[159] The departments do not support the inclusion of the "best practices" subsection because the "specifics of determining best practices are vague."[160] The Administrative Law Judge finds the decision to retain the original language of the rule is reasonable. Of course, facilities are likely to include their own views of "best practices" in their own training, and that is acceptable under the rule. But the rule does not have to require training in "best practices" in order to be found reasonable.

71. Subpart 6. License holder and staff qualifications. Joe Kroll and Mary Ford, on behalf of NACAC suggests that Item A of Subpart 6 be deleted and replaced with requirements they set forth for license holders and staff qualifications.[161] The departments do not support this change, which they believe would amount to a substantial change in qualification requirements as proposed.[162] The departments further explained that this could be very expensive and perhaps not needed to run a successful program. The Administrative Law Judge finds that the departments have justified the reasonableness of the original rule.

72. Mr. LeFleur and others requests that the phrase "who work with female residents" be deleted from Item B.[163] The departments agreed to change the rule as follows: "Staff must be trained in gender-based needs and issues."[164] The Administrative Law Judge finds the rule, as amended, to be needed and reasonable.

Parts 2960.0130 to 2960.0220 – RULES RELATING TO GROUP RESIDENTIAL PROGRAMS

Part 2960.0150 - Personnel Policies.

73. Subpart. 3. Staffing plan. Subitems 1 through 4 of item D relate to strip searches, body searches, shower and bathroom use, and personal hygiene use respectively. The rule requires that the dignity of the resident not be diminished by allowing someone of the opposite sex to supervise the resident in the activities set forth in subitems 1 through 4. To protect the resident against arbitrary searches, Mr. Jon Brandt of Mapletree, and others, commented that there must be more criteria established as to when and under what circumstances these procedures listed in 1 through 4 will be performed.[165] The departments respond that searches are not required under the rule.[166] The departments have elected not to prescribe when searches may be performed. The proposed rule only states that if a search is to be performed, it must be supervised by a person of the same sex. The question raised by the commentators is whether or not the rule can be found reasonable when it does not prescribe when searches may be performed. The Administrative Law Judge finds that the rule is reasonable without the material sought by the commentators. Mr. Gothriel LeFleur commented that item D, subitem (3) be changed to exclude lavatory use.[167] The departments stand by the rule as originally proposed reasoning that the privacy of a resident may be needlessly violated if supervised by a staff of the opposite gender during lavatory use.[168] The Administrative Law Judge finds the rule as originally proposed to be reasonable and necessary to protect the privacy of residents.

74. The single most controversial item in this part of the rule relates to supervision of residents of the opposite sex. As previously discussed, the rule requires that certain demeaning or embarrassing activities such as strip searches be conducted by staff of the same sex. The rule also calls for a written staffing arrangement that requires a contingency plan to ensure a prompt reply by on-call same gender staff as the resident when called for under the subitems under the rule and when essential to fulfill the needs of the resident who has, according to official records or documentation

been victimized by someone of the opposite gender. The relevant language of the rule as originally proposed, follows:

> *The written staffing plan must include a contingency plan that ensures an immediate response by on-call staff of the same gender as the resident when supervision of the resident by staff of the same gender is required under subitems (1) to (4) and when necessary to meet the assessed needs of the resident who, according to the official records or documentation, has been victimized by a person of the opposite gender and who has demonstrated anxiety to staff about supervision by staff of the opposite gender.*

The question presented by the comments is how active the young women in residential homes must be in soliciting same sex supervisors. Specifically, Mr. Mark Campbell suggested that young girls coming from a background of abuse might find it difficult and intimidating to report the abuse.[169] Mr. Campbell further noted that many young women may have had previous histories with men such that if an inappropriate situation developed between a staff member and herself, the young woman may perceive that as a relationship and not be inclined to report it as anything improper.

75. An equally contentious issue surrounding the rule is the supervision of females during nighttime hours by male staff. Clearly, there have been incidents of sexual abuse of female residents by male staff. Some have been outright sexual attacks,[170] while others have involved bartering sex for drugs, alcohol or privileges.[171] Ms. Esther Tomjanovich stated that the concern is primarily that young women who find themselves residents at group homes have already experienced trauma in their lives, and much of this trauma includes sexual abuse perpetrated against them by trusted men.[172] Ms. Tomjanovich further commented that there is often no record of such abuse for one reason or another including threats that harm will come to loved ones if they report the abuse. Ms. Kimberly Greer noted that an earlier draft standard did contain language requiring female staff to supervise females during nighttime hours.[173] Ms. Greer further noted that with the new proposal, the language provides that supervision will only be granted if there is documentation of abuse of an opposite sex individual or there has been demonstrated anxiety about an opposite sex supervision to the staff. Mr. Greer questioned what would happen if there is a lack of any documented abuse, or what if the staff is not observant enough to pick up on the anxiety the girl is experiencing toward the opposite sex supervision. Ms. Greer expressed this concern by stating "To place the responsibility for protecting themselves on young girls in alternative placements is analogous to requiring victims in some way anticipate their own victimizations."[174] Another commentator noted that abused children learn to keep their abuse a secret, and when they do tell someone, they are often accused of lying or simply ignored, reinforcing feelings of humiliation.[175]

76. The departments recognize several of these issues in the SONAR. First, the departments acknowledge that "[t]he majority of girls who end up in residential care have experienced sexual abuse, many of these girls have experienced sexual abuse multiple times, and many at the hands of different perpetrators, the majority of whom have been male."[176] Furthermore, "Girls who experienced sexual abuse are often

times hypersensitive to the potential for further victimization." The SONAR further acknowledges that girls generally, but in particular those girls who have been sexually victimized, prefer having same sex supervision during the nighttime hours. In the departments' post-hearing response to the comments they noted that they chose not to require female staff supervision of female residents during nighttime hours for several reasons.[177] There is a concern with respect to meeting the needs of male residents who have also been victims of sexual abuse. There is also a concern for employment rights of male staff. The departments are concerned that they do not have an adequate factual basis to support a rule requiring female staff for female residents in all cases. The level of scrutiny involved in sex discrimination situations is, in the opinion of the departments, intermediate scrutiny, which calls for a "factual showing of the need for discrimination, and a showing of the relationship of the remedy to the need is required to use gender employment criteria." The departments go on to explain that gender with respect to night time supervision of residents has not been found to be a bona fide occupation qualification. The departments indicate that a survey of incidents of sexual abuse in DHS facilities has shown: "46% of the victims were male, 54% of the victims were female, and 76% of the incidents were perpetuated by male staff, and 24% of the incidents were perpetuated by female staff." And 1999 DHS data on maltreatment incidents for out-of-home residential settings showed that of 7229 findings of maltreatment, only 10 involved facility staff. The 1999 data does not indicate whether the maltreatment was physical, emotional, neglect, or sexual.[178] Thus, the departments do not believe they have enough facts to show a need for the gender specific staffing remedy. The departments did agree to delete some language from the rule and proposed to substitute additional language. The suggested language would change the second paragraph of item D as follows:

> *The written staffing plan must include a contingency plan that ensures an immediate response by on-call staff of the same gender as the resident when supervision of resident by staff of the same gender is required under subitems 1 to 4 and when necessary to meet the assessed need of the resident as determined in part 2960.0070, subpart 5, item B, subitem 2, and when necessary to appropriately care for a resident who was the victim of sexual abuse*…

The proposed change deletes the language out of the proposed rule that requires "official records or documentation" of the abuse and "demonstrated anxiety to staff about supervision by staff of the opposite gender." The departments recognize the reality that "a resident's concerns about same sex supervision at night may not be recognized during an admission screening, but may still be a critical concern for the resident which should be addressed by the facility."[179]

77. There appears to be a drafting error that has arisen in the substitution of the various phrases noted above. A strict reading of the language would suggest that *all* of the conditions set forth in the proposed rule are required before a same gender staff must be present. But the post-hearing submissions from the departments do not suggest that it was intended that all the conditions be present. The intent was that *any* one of the conditions would trigger the requirement. The Administrative Law Judge

finds that the rule would be unreasonable if all the conditions were required. In order to cure this defect, the rule should be rewritten as follows:

> The written staffing plan must include a contingency plan than ensures an immediate response by on-call staff of the same gender of the resident when:
>
> (1) supervision of resident by staff of the same gender is required under sub items 1 to 4; or,
>
> (2) when necessary to meet the assessed need of the resident as determined in part 2960.0070, subpart 5, item b, sub item 2; or,
>
> (3) when necessary to appropriately care for a resident who was a victim of sexual abuse.
>
> The contingency plan must include requirements which ensure that staff will document…"

The Administrative Law Judge finds that the departments have justified their decision not to require female staff supervision of female residents during night time hours in all cases. The departments suggested changes do not render the rule to be substantially different.

78. Paragraph F of the proposed rule sets forth the number of awake staff required to be present during sleeping hours. An exception to the rule is for the "houseparent model," which does not have to have any awake staff. But one of the limitations proposed for the houseparent model is that the program must have fewer than seven residents. The concern is that some houseparent models currently operate effectively with more than six residents. Jay Pepin, Director of Little Sand Group Homes, commented that by requiring houseparent models to have overnight awake staff, the departments are changing the atmosphere and the manner in which services are offered.[180] Furthermore, Mr. Pepin noted that many facilities have operated successfully for a long period of time with ten kids, and much of the houseparent model success is attributed to the atmosphere created by a home environment. Mr. Pepin suggested changing the allowed number of residents to ten or fewer. The departments in their SONAR reasoned that more than six residents requires more treatment and thus, more staff would be required to meet the needs of the residents.[181] But in the departments' post-hearing response, the departments agreed to change the language of the rule to allow the houseparent model to have fewer than eleven residents.[182] The departments reasoned that changing the number to fewer than eleven would be keeping with current practice, and an acknowledgement that the houseparent models now operating appear to be successful. The Administrative Law Judge finds that the rule, as amended, has been demonstrated to be reasonable. The change is not a substantial one.

79. Paragraph G of the proposed rule would require the license holder to ensure that educational services that meet the educational needs of the residents are provided by qualified teachers certified by the Department of Children, Families, and Learning. Ms. Regan, on behalf of the Minnesota Council of Child Caring Agencies, pointed out that it is the local school district and not the license holder that is

responsible for the education of residents.[183] The departments agreed with Ms. Regan and have proposed to delete item G from the rule.[184] The Administrative Law Judge finds that the rule, as amended, is reasonable.

Paragraph J.

80. Mary Ford suggests substituting the word "address" for the word "consider" in the second sentence of item J.[185] The departments disagree with Ms. Ford's recommendation and do not opt to change the language.[186] The Administrative Law Judge finds that either word would be appropriate.

81. Subpart 4. Personnel training. This subpart requires the license holder to develop an annual training plan for employees. Mary Ford recommended the underlined language below.[187] "Staff who have direct contact with residents must complete at least 24 hours of in-service training per year. One-half of the training must be skill development training. Staff who do not have direct contact and volunteers must complete in service training requirement consistent with their duties directly related to the needs of children in their care." The departments' agree with Ms. Ford, noting that the change is not a substantial departure from the original proposed rule.[188] The additional language clarifies the rule's objective with respect to the kind of training the employees of licensed programs should have. The Administrative Law Judge finds the departments' changed rule to be reasonable. The additional language does not substantially change the rule.

Part 2960.0160. Admission Policies and Process.

82. Subpart 2. Ability to meet resident needs. Subpart 2 refers to the program's ability to meet residents' needs. Prior to admission, the license holder must determine based on the placement agency's information about the resident, "whether" the program is able to meet the needs of that resident. Mary Ford suggests changing the word "whether" with the word "that".[189] The departments decline any change in the proposed rule.[190] The departments observe that the word "whether" invokes the possibility of an alternative. In other words, if the license holder is unable to meet the needs of the resident, the resident should not be admitted to the facility. The Administrative Law Judge finds that the original rule is reasonable.

83. Item D of this subpart deals with what requirements and precautions must be taken when a resident is a sex offender. The issue of contention refers to placing the individual in separate sleeping quarters.[191] Ms. Regan believes the language is too restrictive in the sense it allows little room for any other outcome from the assessment, even if the child is not at risk for offending. Ms. Regan proposes a language change to item D-striking the phrase "give the resident an individual sleeping room" and adding the words "such as giving" the resident an individual sleeping room.[192] The departments agree and propose to change the rule as follows: "The license holder must assess the resident to determine which precautions may be appropriate, such as to give the resident an individual room and direct staff to pay attention to the resident's interaction with others."[193] The Administrative Law Judge finds the rule, as amended, to be reasonable.

Part 2960.0180. Facility Operational Service Policies and Practices.

84. Subpart 2 (B) (3). Ms. Regan proposed to strike the above rule as being repetitive of rule 2960.0190, subpart 1.[194] The departments agree to strike the above rule because the requirements are sufficiently addressed in 2960.0190, subpart 1.[195] The Administrative Law Judge finds the deletion is reasonable, and it does not substantially change the rule as originally proposed.

85. Subpart 4. Audio or visual recording of resident. Mr. LeFleur requests that the rule be modified to allow video and voice recording for safety and health reasons.[196] He further illustrated this need by using the example that a resident on suicide watch should not be allowed to refuse being videotaped or voice recorded. The departments agree with Mr. LeFleur's concern over the safety of the residents and agree to amend the rule as follows: "A resident must be informed when actions are being recorded and have the right to refuse any recording unless it is authorized by law or is necessary for program security or to protect the health and safety of a resident."[197] The Administrative Law Judge finds the amended rule to be reasonable.

Parts 2960.0230 to 2960.0290 – RULES RELATING TO DETENTION FACILITIES.

Part 2960.0240 – Personnel Policies.

86. Subpart 1. Job descriptions and qualifications. One of the qualifications of this rule is that staff that supervise residents must be at least 21 years old and have high school diploma. Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that these qualifications could be a problem and asks that current staff be exempt from the proposed rule.[198] Bill Fruy, of the Northwestern Minnesota Juvenile Center, serves a population of about 60% Native American youths. If he is to have culturally appropriate staffing, he needs to be able to continue to hire 18 year olds.[199] The departments agree with Mr. Benjamin's recommendation and have agreed to modify the language of the proposed rule by deleting the phrase "at least a high school diploma or general education development degree".[200] But the departments added the following underlined language: "Persons older than 18 years old but younger than 21 years old may be employed if they are enrolled or have completed course work in a post-secondary education program to pursue a degree in a behavioral science." The Administrative Law Judge finds the departments have justified the changed rule as reasonable.

87. Subpart 3. Staffing plan. This section of the rule prohibits direct supervision by staff of the opposite gender during lavatory use by the residents. Mr. Todd Benjamin of the Minnesota Juvenile Detention Association and others expressed concern over subitem (3) concerning lavatory use and requested it be deleted because of the risk that an employee of the opposite gender may unintentionally view a resident using the lavatory.[201] The departments support the rule as originally proposed, making a distinction between inadvertent observation and direct supervision.[202] The Administrative Law Judge finds the departments' decision to keep the rule as originally proposed is reasonable.

88. Item F, subitem 2 reads as follows:

> *Staff must not be placed in positions of responsibility for the supervision and welfare of a resident of the opposite gender in circumstances that can be described as an invasion of privacy, degrading, or humiliating to the resident. Male staff must not supervise female residents except in activity areas and only when female staff are on duty and present in the facility. Female staff may supervise male residents, provided privacy is protected and visual and audio monitoring…*

Mr. Benjamin suggested a change to item F subitem (2) to read as follows: "Staff must not be placed in positions of responsibility for the supervision and welfare of a resident in circumstances that can be described as an invasion of privacy, degrading, or humiliating to the resident. Opposite gendered staff may supervise residents, provided resident privacy is protected and visual and audio monitoring…"[203] In their SONAR, the departments argue that the reasonableness for the rule lies in the resident's right to privacy.[204] The departments explain that the rule requirement is consistent with Minnesota Statutes § 642.08 which "prohibits the detention of a person of one sex without the presence of a staff member of the same sex." The departments comment further that the item is consistent with Minnesota Rule 2911.0900, subpart 10. In their post-hearing response, they support the rule as originally proposed, citing their SONAR. The data cited in Finding 76 regarding the perpetrators of sexual abuse in DHS facilities supports the proposed rule. The Administrative Law Judge finds that the rule has been justified without a change.

Part 2960.0260 – Classification, Separation, and Segregation of Residents.

89. Subpart 1 of this section deals with classification of residents. Subpart 2 deals with separation of residents based on gender. Subpart 3 of this section deals with residents who may have sexually abusive behavior. Gothriel LeFleur, on behalf of Hennepin County Community Corrections suggests that the title of this part of the proposed rule should be modified to delete the word "segregation".[205] The departments agree with Mr. LeFleur.[206] The departments acknowledge that this section of the rule does not reference the segregation of residents in any capacity. The Administrative Law Judge finds that the proposed rule, as amended, is needed and reasonable.

Part 2960.0270 – Facility Operational Policies and Procedure Requirements, Services, and Programs.

90. Subpart 4. Medical services. Mr. LeFleur commented on part 2960.0080, sub 11, with respect to a detention program's need to offer emergency mental health and dental care.[207] The departments agree to a change in the proposed rule which would

read as follows: "A resident must receive emergency mental health and dental care when needed."[208] The departments note that such a requirement is necessary because it is unlikely a resident in detention would be able to arrange such services for himself. The Administrative Law Judge finds the amended rule has been shown to be reasonable to protect the health of residents in detention facilities. The change does not make the rule substantially different.

91. Subpart 5. Visitation. B. One of the requirements of this section is that a minimum of 8 hours a week must be maintained for visiting. Mr. LeFleur commented that the requirement of 8 hours of scheduled visitation is an unfunded mandate, and it should be eliminated or be modified to a 4 to 6 hour requirement.[209] The departments support the rule as originally proposed, noting that a minimum of 8 hours gives prospective visitors a reasonable opportunity to arrange their schedules to accommodate a visit.[210] The Administrative Law Judge finds the original rule has been justified as reasonable.

Part 2960.0340 – Security Standards

92. Subpart 1. Supervision of non-employee service personnel. Mr. LeFleur recommended that the standard in this section be changed to allow non-program employees to have contact with residents.[211] He reasoned that facilities don't directly employ all persons who take part in resident programming, and cited teachers and volunteers as examples. The departments found Mr. LeFleur's recommendation persuasive and agreed to change the language of the section to read as follows: "A person working at the facility, who is not employed by the facility, must be under the general supervision of facility staff, unless that person has been trained in the facility's policies and procedures." [212] The departments acknowledged that volunteers and licensed professionals who are under contract to the facility do not need to be supervised if they have gone through the appropriate training with respect to policies and procedures. The Administrative Law Judge finds that the rule, as amended, is reasonable.

Part 2960.0350 - Discharge

93. Subpart 1. Discharge criteria. Mr. Gothriel LeFleur requested that item A of this section not be applied to detention programs.[213] The departments agreed with Mr. LeFleur's suggestion and agreed to change the rule to exclude detention facilities.[214] The departments reasoned that the change is needed since detention facilities do not have resident treatment plans. The departments' proposed language change is as follows: "The facility must have a written discharge criteria that allows discharge according to items A and B, except that detention facilities are exempt form preparing written criteria in item A and must prepare criteria for item C. The departments further add item C as follows: "C. The legal authority to hold the resident expires." The Administrative Law Judge finds that the departments have justified the rule, as amended, as reasonable and necessary to accommodate detention facilities inclusion in this part of the rule.

Part 2960.0710 - Restrictive Procedures Certification.

94. Subpart 6. Use of Physical holding or seclusion**.** Items A-M list the conditions under which physical holding or seclusion are warranted. Mr. Gothriel LeFleur commented that section D should be modified to exclude the terms "constantly" and "directly" with respect to the supervision of resident by staff during the use of physical holding or seclusion.[215] The departments support the rule as originally proposed, noting that constant and direct supervision of a resident in seclusion or physical holding is needed to protect their health and safety.[216] The Administrative Law Judge finds that the rule as originally proposed is reasonable.

95. Mr. LeFleur commented that Item L is an unfunded mandate and should only apply to new construction.[217] He also requested waivers be given. The departments support the rule as originally proposed but noted that they will consider variances on a case-by-case basis.[218] The Administrative Law Judge finds the rule is reasonable as proposed.

96. Item G requires staff to get permission from the facilities program director or mental health professional concerning the use of physical holding or seclusion no later than thirty minutes after initiating such measures. Mr. Richard Quigley, on behalf Woodland Hills, requests a provision that allows the mental health professional and/or program director to designate other persons to grant permission because the designated persons are not always available.[219] The departments support the proposed rule because only the mental health and/or program director would know for certain of any mental or physical condition of the resident that may preclude the use of these restrictive procedures.[220] The Administrative Law Judge finds this to be an adequate justification for the rule. It is unlikely that both would be unavailable simultaneously.

97. Item K, subitem 6 requires the staff person who authorizes the use of physical holding and/or seclusion to document the names of the persons involved in procedure(s) and the names of the witnesses as well. Mr. Richard Quigley says that documenting the names of witnesses would breach confidentiality.[221] He also states that it is unreasonable to record the names of witnesses in a public forum. The departments support the proposed rule.[222] They respond that confidentiality should not be a concern because these names would not be available to the general public, but only to persons directly involved in the resident's treatment, or licensing agency. The Administrative Law Judge finds the decision of the departments to retain the rule as originally proposed to be reasonable.

98. Subpart 7. Use of Mechanical restraints The proposed rule places severe limitations on the use of mechanical restraints, including detailed documentation requirements. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association requested that item J, subitem (3) not apply to detention centers.[223] The departments decline to remove detention centers from the rule requirements.[224] The departments in their SONAR indicate that the documentation by the license holder of

the use of restraints is important as a means of defending the action if a complaint is raised.[225] Furthermore, the departments reasoned that recording the use of the restraint immediately afterwards is best because the incident is fresh in the staff person's mind. The Administrative Law Judge finds that the departments have justified the reasonableness of the rule.

99. Subpart 9. Training for staff using physical holding or seclusion. Items A-F list the training necessary for staff members. Mr. Richard Quigley questions who will pay for this staff training.[226] The departments responded that facilities typically pay for the training associated with the use of restrictive procedures.[227] The departments reasoned that this training is required in current rules and it is reasonable to expect that staff have this training for their own safety and for the safety of the resident. The Administrative Law Judge finds that the departments have justified the reasonableness of the proposed rule.

Parts 2960.3000 to 2960.3340 – FOSTER FAMILY SETTINGS, FOSTER RESIDENCE SETTINGS AND ADDITIONAL REQUIREMENTS FOR TREATMENT FOSTER CARE

2960.3010 – Definitions

100. Subp. 29, Licensed Professional. Following comments, the departments recommend that this definition be changed to reference the Children's Mental Health Act, a standard used among the professionals in the field. Therefore, the departments propose that this definition should read as follows:

> Subp. 29. **Licensed professional.** "Licensed professional" means a person qualified to complete a diagnostic evaluation, including a physician licensed under Minnesota Statutes, chapter 147, or a qualified mental health professional licensed under Minnesota Statutes, section 148B.18, subdivision 10, or a person defined as a mental health professional in Minnesota Statutes, section 245.4871, subdivision 27.

The Administrative Law Judge finds that the proposed rule, as amended, is reasonable. Further, the proposed modification does not make rule "substantially different".

101. Subp. 36. Respite Care. The current definition of "respite care" in this subpart states as follows:

> "Respite care" means temporary care of foster children in a licensed foster home other than the foster home the child was placed in.

Comments suggested that the definition of "respite care" include the use of respite care for "kinship children" and the use of "respite care" in "non-licensed, kinship homes." The departments indicated that these added measures are unnecessary because the current definition of "respite care" is reasonably consistent with the use of

the term in the foster care field, therefore there is no risk of confusion or unreasonable interpretation. Additionally, the use of respite care for "kinship children" is not covered under the Umbrella Rule, since this rule only aims to establish **program standards** for the secure and nonsecure residential treatment facilities, which necessarily do not apply to license holder's own children.[228] The ALJ also finds that the use of "temporary, non-licensed" respite care for foster children is adequately covered under the terms governing "respite and substitute care for family settings," in part 2960.3090, Subp. 2. and Subp. 3. Therefore, the rule may be adopted without the additions.

102. Subpart 43. Treatment foster care. A comment suggested that the definition of "treatment foster care" be amended. The record indicates that the goal of the definition is to recognize "treatment foster care" as a specific, independent service so that all stakeholders in child welfare are able to distinguish the difference between "treatment foster care" and "foster care." The current definition amply supports such distinctiveness, as it reasonably identifies it as a different service than that described for "foster care," in part 9560.0521, subp. 9. The record indicates that the definition is accurate and is similar to the use of the term in the treatment foster care field. Therefore, the ALJ finds the definition, as proposed, necessary and reasonable.

2960.3030 – Capacity Limits

103. A number of comments expressed concerns regarding the maximum capacity limitations for family foster homes set forth in subparts 1 through 3. The departments responded that many of the current foster homes with a resident population above the proposed maximum capacity are currently licensed as a "Group Family Foster Care" provider and could be licensed as a "Group Residential Setting," under parts 2960.0010 to 2960.0220 of the proposed rule. Therefore, although the current rule sets a capacity limitation on family foster homes, the 79 current family foster homes licensed for a capacity above this maximum have a reasonable alternative, i.e., licensing under the "Group Residential Setting." The additional requirements for a group family residential license would be administrative, such as the requirements to develop and maintain program policies for admission, program outcome, measurements and evaluation.

The departments also noted that capacity limits and ratios were developed through the public rule advisory process. These limits and ratios rely on the advice of foster parents, professionals in the foster care field and standards endorsed by the Family Foster-based Treatment Association.[229] The consensus of the public attention to the proposed rule indicate that the proposed capacity limits are necessary to maintain a balance of essential care between residents, the care provider and the case worker. The Administrative Law Judge finds that the departments have justified the rule as reasonable.

104. Subp. 3. Exceptions to Capacity Limits. A comment suggested that item A. under this subpart be changed to include keeping a child in the child's home community as an exception to a capacity limit. The departments agreed that this definition be changed to correspond to this comment because keeping a child in the

child's home community promotes a child's well being and improves continuity at school and in the community. The Administrative Law Judge finds that the rule, as amended, has been demonstrated to be reasonable. This modification does not make the rule substantially different from that proposed.

2960.3040 - Foster Home Physical Environment

105. Subp. 1. Fire, Health, Building and Zoning Codes. The departments have proposed that foster homes must comply with applicable fire, health, building, and zoning codes. Suzanne Douglas, program manager of Hennepin County's Children, Family and Adult Services Department, suggested that this be replaced with a rule that would require a fire extinguisher and smoke detector, along with a general statement requiring foster homes to be "safe from fire and structural hazards."[230] She reasoned that such a rule would be simpler than having to work with unlimited codes from different municipalities. In addition to Ms. Douglas, several county workers commented that requiring foster homes to comply with these codes would increase the current home safety requirement by requiring hardwired interconnected smoke detector systems in homes licensed for more than three children. They noted that currently they could grant a variance, but were opposed to the newly proposed rules because it created additional burdens on a foster family.[231] The departments responded that a hardwired interconnected smoke detector system is a current requirement of the fire code for foster homes licensed for more than three children, and is required in all new construction or when a home is remodeled and must meet fire code. The departments went on to note that county agencies cannot grant variances to this requirement, only the state fire marshal's office can do so. In response to both Ms. Douglas's concerns and the nine county concerns, the departments reasoned that the various codes listed in the rule cover much more than just a fire extinguisher and a smoke detector, and it is in the best interest of the children that homes be inspected according to current code requirements. However, the departments did agree to use a home safety checklist document for inspections and to keep the checklist in compliance with current codes.[232] The Administrative Law Judge believes that the departments have demonstrated that it is reasonable to require that foster homes comply with current fire, health, and other codes. It would be unreasonable to allow a situation where a family with more than three kinship-related children had to comply with fire codes, but next door, in the same type of house, a foster family with three children did not have to comply with the codes.

106. Subpart 2. Sleeping Space. The departments' proposed rule requires a foster child to be provided with a separate bed, suitably sized, except that two siblings of the same sex could share a double bed. One commentator suggested that there should be an age limit of eight years old for children sharing a bed. The departments declined to accept the suggestion, preferring to rely on the placing agency, the licensing social worker, and the foster parents to determine when such arrangements are appropriate. The departments point out that the existing rule does not require a separate bed for every foster child. The Administrative Law Judge finds that the departments have justified the proposed rule without the suggested change.

107. A related comment came from Pam Foss, on behalf of Benton County, regarding both beds and adequate space for belongings.[233] In particular, she was concerned that the rule, which talks about "a separate bed suitably sized for the child" and "an identified space for clothing and personal possessions" was unrealistic for many providers. She wondered if providers were supposed to have a separate area of the home waiting for a foster child at all times. She was concerned that many quality providers do not have a lot of extra space just waiting for a foster child to appear. The department, in response, pointed out that the rule does not require a separate room, separate dresser, or separate closet, and that the spaces could be shared so long as there is a designated space available for the foster child. Again, the department expects that the social worker who licenses the home will work with the foster family to determine the individual arrangements in the home.[234] The Administrative Law Judge believes that the department has justified its proposed rule. The rule would be clearer if a sentence were added along the lines of: "This space may be shared with others in the home". But that addition is merely suggested, not required.

Part 2960.3050 – Foster Home Safety.

108. Subparts 1 and 2. Inspections. The proposed rule requires that prior to licensure, the foster home must be inspected by a licensing agency employee using the home safety checklist provided by the Commissioner of Human Services. The rule goes on to provide that if one of five specified conditions exist, then the foster home must be inspected and approved by a state or local fire inspector and other specified inspectors. The five conditions include "if the home is to be licensed for four or more foster children." The proposed rule drew comments suggesting that it would require a health inspection of all family foster homes (not true) and a fire inspection of every foster home (also not true).[235] In response to the critics, the department reworked subparts 1 and 2 to limit health inspections to situations where the licensing agency finds conditions which could present a risk to the health of a foster child. Fire inspections, on the other hand, would continue for homes that met any of the five specified conditions. The Department reasoned that its home safety checklist includes health items, and would allow a local agency representative to spot a potential health problem which could, if the inspector deemed it necessary, result in health inspection. With regard to fire inspections, the department pointed out that the criteria in the rule were based upon an agreement between the state fire marshal's office and the DHS division of licensing, and they represent an attempt to limit fire inspections to situations where there is a meaningful risk to the children.[236] The Administrative Law Judge believes that the proposed rule, as amended, has a rational basis, and can be adopted. The modifications do not make the rule substantially different from that proposed.

109. Subpart 3. Emergency procedures. One person suggested that in addition to the safeguards already set forth in the rule, the rule should be amended to require that foster parents and the licensing agency review the emergency procedures at the time of each new placement. The agency responded that such a requirement was unnecessary in light of the other provisions in the rule and because some homes, which have many placements during a year, would be forced to have an unreasonable number of emergency procedures reviews. The Administrative Law Judge finds that the department has justified the rule as proposed, and no additional changes are needed.

2960.0360 – License Holder Qualifications

110. This rule contains provisions relating to experience requirements, background study, personal characteristics of applicants, and home study of applicants. In light of the breadth and detail in the rule, it drew a surprisingly small number of comments.

111. Suzanne Douglas, on behalf of Hennepin County, Pam Foss, on behalf of Benton County, Belva Britton-Williams, on behalf of Sherburne County, and Cheryl Smetana McHugh of Therapeutic Services Agency all focused on subpart 3 of the proposed rule, which deals with personal characteristics of applicants, and in particular their physical and mental health. According to the SONAR,[237] the previous rule required a physician's statement from every applicant and household member to the effect that they are physically able to care for children. However, feedback from child foster care managers recommended that this requirement be reduced because requiring a physician's statement kept some prospective foster parents from applying to be licensed, was time consuming, and sometimes presented a cost to the applicant. In its initial draft, the department proposed to reduce this requirement to a self-signed statement of physical health, attention to medical needs, and freedom from chemical use problems. After the hearing, and after reviewing the comments, the department proposed to change part of the rule to avoid a misinterpretation. The rule would now require the self-statement to include a statement that the applicant and household members do not pose a risk to the child's health. The Administrative Law Judge finds the department has demonstrated the need and reasonableness of its proposal to move from a physician's statement to a self-statement. The change proposed by the departments following the hearing does not render the rule substantially different.

Proposed rule 2960.3070 – Foster Parent Training.

112. This rule provides for pre-admittance orientation and ongoing in-service training. Both aspects of the rule drew criticism.

113. The proposed rule requires a non-relative foster parent to complete a minimum of six hours of orientation before admitting a foster child. In the case of relatives, however, orientation can be completed with 30 days following the initial placement. The SONAR pointed out that this distinction arose from the advisory committee, which found that the increased emphasis on placing children with relatives and the emergency nature of a placement with relatives required that orientation be allowed to occur after the placement, rather than before. The departments adopted this suggestion, but required that an orientation for relatives must be completed within 30 days following the initial placement. Suzanne Douglas, on behalf of Hennepin County, and others commented that the 30-day limit is not workable, and recommended that it be changed to 120 days. She stated that many counties do not offer training every 30 days for cost reasons.[238] In Hennepin County, for example, orientation training is offered only every other month. The nine county human service agencies who joined together to file comments[239] thought 30 days was too short in light of the limited resources available. They noted the priority that they put on licensing emergency relative child foster care under the 120-day limit (to be discussed below). They felt that orientation within 30 days would just get in the way of that licensing priority. A number

of other speakers agreed with Hennepin County's request to allow the orientation to take place anytime within 120 days of the placement.[240] In response, the departments pointed out that the child is in the foster home during the 120 days that the counties would allow to pass before orientation, and believe that the family needs the training provided by the orientation process in order to assure that the placement is successful. The existing rule, at part 9545.0150, required the applicants to begin the six hours of orientation prior to receiving the first child in placement, and makes no exception for relatives. It was the advisory committee that recommended a change to allow 30 days to pass in the case of relatives. The Administrative Law Judge finds that the departments have demonstrated the reasonableness of their proposal, but suggests that the departments consider a "safety valve" provision that would allow a longer period of time in cases where orientation training is not available within some reasonable distance during the initial 30-day period. This concept was not discussed during the hearing, and thus there is no specific language to be recommended, but the Administrative Law Judge recommends the departments consider the concept.

114. Subpart 2. In-Service Training. The departments have proposed that each foster parent must complete a minimum of 12 hours of training per year. This is a change from the existing rule, which permits foster parents living in the same home to combine their hours of training to comply with a 12-hour annual requirement. The advisory committee "strongly recommended" that foster parents not be allowed to combine their hours of training, but rather that each foster parent should have to obtain it.[241] Several persons commented about this change, generally stating that foster parents would not have time to attend classes and care for children. Contemporary family situations, with both parents holding down outside jobs, do make for a different scheduling issue than if one stays at home. Another issue relates to the availability of training, particularly in rural areas. The time problem is multiplied if additional time is needed to travel to a training site. Finally, cost was also raised as an issue. As Pam Foss, of Benton County put it, "I feel that 24 hours or 12 hours per applicant is outrageous unless there is some pot of money out there that I am not aware of…". The nine-county group commented that their counties were currently experiencing a decline in new family child foster care licensing, and they feared that this rule would impact the number of applicants willing to take on the job.[242] Hennepin County thought it was not realistic to expect 24 hours of training a year, and that this will be a barrier to retention.[243] Pam Larson, of Anoka County, noted that for persons that are already licensed, 12 hours per family was enough, and it was reasonable to expect that if one family member attended a training session, the information from that session would be communicated to the other one in the normal course of family activities. She feared that if the rule were adopted as proposed, many persons would have one name taken off the license, so that one could stay home while the other went to training. She thought that was a bad result and favored having both family members on the license and full participants in the foster parent process.[244]

115. The departments responded by reminding persons that classroom training is not the only kind of recognized training, and that activities such as consultation with therapists, medical professionals, school professionals, and social workers, as well as reading books or articles on the issues listed in the rule, would be considered as

legitimate training.[245] Finally, they responded to the fear of single licensees by pointing out that the proposed rule refers to "each foster parent" completing 12 hours per year, rather than "each licensee". However, the Administrative Law Judge would note that proposed rule part 2960.3010, subp. 25, defines the term "foster parent" to mean an individual who is licensed to provide foster care. Therefore, the counties' concern about this rule causing single licensees is valid.

116. Having weighed all of the above considerations, the Administrative Law Judge finds that the agency has justified 12 hours per parent. Given the fact that the rule does not limit the hours to actual classroom hours, asking each foster parent to spend 12 hours a year to review and improve skills is reasonable. Given the broad interpretation of "training" put forth by the departments, the Administrative Law Judge suspects that most foster parents already spend far more than 12 hours per year. So long as counties do not attempt to narrow the departments' interpretation of what kind of training is acceptable, foster parents should not have difficulty satisfying the requirement. The rule may be adopted without change.

2960.3080 – Placement, Continued Stay and Discharge.

117. Subpart 3. Child's Property. One comment opposed the last two sentences of this rule, which requires an inventory, as too "institutional" and not "home-like". The department agreed to remove the requirement. The Administrative Law Judge finds that the rule, without the inventory requirement, has been justified as reasonable.

118. Subpart 5. Cooperation (Record Keeping). The proposed rule attempts to regulate cooperation between the license holder, the foster child, and the placing agency. It first requires the license holder to cooperate with the case manager and other appropriate parties concerning the child's case plan. The rule also requires that the license holder "shall cooperate in at least the following areas:". The rule then lists seven specific areas where cooperation is required. Although no person complained about it, the phrase "at least" causes the rule to be impermissibly vague. It is impossible for a license holder to know whether they are in compliance or not because an agency could claim that the license holder was not in compliance because the license holder was not cooperating in some other unnamed area. In order to cure this defect, the phrase "at least" must be deleted or, in the alternative, the entire sentence and the list that follows it must be deleted. There was one objection to the last item in the list (relating to maintaining a record of illness), but the Administrative Law Judge finds that the department has justified that requirement, and it may remain in the rule if the list is retained.

119. Subpart 10. Complaints and Grievances. This is the provision that drew most of the comments about this particular rule. Some felt that a formal grievance procedure intrudes too far into the traditional parent-child relationship. Some commentators felt that it is too "bureaucratic", and that complaints and grievances should be directed to the county agency.[246] The departments responded to these complaints by pointing out that a 1995 statute[247] requires that the rules have "appropriate grievance and appeal procedures for clients and families." The Administrative Law Judge finds that the rule is a reasonable response to this

requirement. It requires the license holder and the licensing agency to work together to develop a procedure, and it requires either the licensing agency or the license holder to inform the child and the child's parent about the procedure. That is not overly onerous, or overly intrusive. It is an "appropriate" plan within the meaning of the statute.

2960.3090 – Respite and Substitute Care for Family Setting.

120. This rule regulates who may serve as a substitute caregiver, both short-term and long-term, what notice must be given prior to using a respite and substitute care arrangement, what information must be given to respite and substitute caregivers, and ends with a prohibition against foster residence settings using respite caregivers, long-term substitutes, and short-term substitutes. It is clear that the departments attempted to reconcile a number of conflicting considerations to arrive at a workable rule. But that attempt did result in a somewhat complicated rule, which drew criticism.

121. Subpart 1. Notice Requirements. The rule, as originally proposed, required that in non-emergency situations, the license holder, parent, and placing agency had to agree on arrangements within 10 working days prior to the use of any respite or substitute care. One commentator noted that such a requirement did not allow for any spontaneity and was contrary to the family foster home model.[248] The Department considered the comment, and proposed to add a provision to the rule which would allow the parties to have an ongoing written agreement to cover the notice situation. The Administrative Law Judge finds that the rule, as amended, has been justified as needed and reasonable. It is not substantially different from the rule as originally proposed.

122. Subpart 2. Qualifications of Long-Term and Short-Term Substitute Caregivers. The proposed rule provides that in the case of substitute care for less than 72 continuous hours, the foster parent and placing agency must agree that the proposed substitute caregiver can meet the needs of the foster child. For longer-term caregivers, however, there are requirements concerning age, background study, and, for frequently used ones, health and training requirements. The Department justified the distinction between long-term and short-term as needed in order to allow substantial requirements for caregivers but still allow for short-term "babysitters."[249] Some people believe that this distinction is too risky, and that all caregivers should be subjected to the same substantial requirements for a background check, minimum age, etc.[250] The Administrative Law Judge finds that there is a reasonable basis to distinguish between the two types of caregivers and to require stricter standards for long-term substitutes. Requiring the agreement of the placing agency to each short-term caregiver is a reasonable check on the foster parents. The Administrative Law Judge concludes that the rule may be adopted as proposed.

2960.3100 – Records

123. Foster Care License Records. This rule requires the license holder to cooperate with the agency to ensure that the agency has certain records. One commentator suggested that the list of required records be expanded to add school

reports on all school age children in the home at the time of initial licensure.[251] Ms. Douglas reasoned that it is important to find out how a family's own children are doing in school and how the family works with the school. In response, the departments agreed that it is desirable to know about school-home relations, but questioned whether those records were a reasonable way to discover that information. They thought asking local schools about their experiences with the prospective foster parents, and asking the foster parents about their ability to work with the schools, was a better way to accomplish this. The departments questioned whether getting grade reports and other non-public information about the children could be justified. The Administrative Law Judge finds the departments have a rational basis for this point. If there is an issue about an individual family's ability to work with the schools, it makes more sense to have the agency contact the schools directly, rather than requiring all families to provide school reports to the agency on a regular basis. The departments have justified the rule as proposed without the addition.

124. Several people suggested that a lifebook on the foster children be given to and updated by foster parents, for all placements. They propose that the lifebook be returned to the agency when a child leaves the foster home. Others suggested that all of the foster parent's records of a child be returned to the licensing agency when the child is discharged. The departments responded that they generally support the use of lifebooks, but that they were unwilling to mandate them in all situations because the length of children's placements varies. The Administrative Law Judge believes that this is a reasonable basis to exclude lifebooks as a requirement, and that the subpart one of the rule may be adopted without requiring lifebooks.

125. Subpart 2. Foster Child Records. This rule sets forth a limited amount of information that the license holder is required to keep for each foster child. The rule, as initially proposed, required that the license holder keep a record of the initial inventory of the child's belongings at admission. This inventory was initially required by Part 2960.3080, subpart 3, but that requirement was deleted at the request of some commentators. Since there is no longer a requirement for initial inventory, it is appropriate for the departments to remove the requirement for the license holder to maintain the initial inventory. The departments have proposed to delete the reference to the initial inventory, and the Administrative Law Judge finds that change to be insubstantial.

126. Another comment suggested that the foster parents' records of a child be returned to the licensing agency when the child is discharged from the home. In response, the departments point out that this rule does not limit the ability of an agency to obtain whatever records it wants from the foster home, and the departments recommend (but do not require) that foster parents maintain some sort of record of their work with a child even after the child is discharged. The departments do not believe it is appropriate that all records be returned at the time of discharge. The Administrative Law Judge finds that the departments have justified the reasonableness of this rule without the addition of that requirement.

2960.3200-3230 – Additional Requirements for Foster Residence Settings

127. "Foster residence setting" is distinguished from a "foster family setting" by the fact that in the foster residence setting the license holder does not reside at the facility. That is in contrast to the foster family setting, where the license holder does reside at the facility. The departments have proposed some additional rules for foster residence settings, and in one case (relating to training) a totally different requirement. The general rule is that the foster residence setting must meet all of the rules relating to traditional foster homes, plus the additional requirements set forth below. These facilities are informally known as "corporate foster care," and traditionally have been licensed under the existing foster care rule with no individual standards.

128. A threshold issue is whether these foster residence settings should be licensed through the state, or through individual counties. According to the departments, counties have been licensing corporate foster care facilities for approximately 15 years. In early rule discussions, it was the state's intent to license these facilities itself. However, there has been a significant increase in the number of these homes in recent years, and budget constraints at the state level have changed this plan. The departments now propose that the counties continue to license these facilities, believing that the counties have staff and procedures available to do so. Counties, on the other hand, were surprised by the state's suggestion that they license the facilities. They point out that many of these facilities are parts of commonly-owned "chains" which operate facilities in different counties and move staff from one facility to another as needs dictate. The counties point out that background checks, for example, ought to be done on a statewide basis, rather than have duplicative background checks made by each county.[252] There is nothing in the rule itself which dictates that the county must do the licensing, but there is nothing in the rule which dictates that the state should do it. The rule is silent on that question. The issue then becomes one of whether or not the rule is unreasonable because it does not have a provision requiring the state to do it. The Administrative Law Judge finds the rule is not unreasonable without such a provision, because of the past practice of county licensure. Counties have been licensing these facilities in the past, and that provides a rational basis for not requiring the state to do so.

2960.3220 – Staffing Patterns and Personnel Policies

129. Ms. Belva Britton-Williams, representing Sherburne County Human Services, noted that the rule did not prohibit the use of alcohol and drugs while working in this setting. She believed that drug and alcohol use on the job should be prohibited, and result in termination.[253] The departments agreed with this proposal, and proposed language to require license holders to adopt policies prohibiting the use of illegal drugs and alcohol and requiring that those who do so are subject to dismissal.[254] The departments supported this addition as correcting an inadvertent error and stated that the prohibition of drug and alcohol use by staff is a normal prohibition in the field.

130. The departments also propose to add a subpart relating to medication administration in response to an informal comment communicated by a Redwood County licensor.[255] The proposed subpart would require a policy on medication administration that requires staff to document medication administration errors. In support of the proposed addition, the Department noted that medication errors can

cause injury or death and that documentation of medication administration problems will help assure corrective action by the license holder. Finally, the Department argued that this additional requirement for a medication administration policy would not cause the rule to be substantially different from that proposed.

131. The Administrative Law Judge finds that both of the proposed additions (drug and alcohol policy, and medication administration policy) have been justified as needed, reasonable, and not substantially different. Both are common sense matters which are most likely already part of any corporate licensee's existing program.

2960.3300 to 2960.3330 – ADDITIONAL REQUIREMENTS FOR FOSTER FAMILY SETTINGS THAT OFFER TREATMENT FOR FOSTER CARE SERVICES

132. In 1999, the legislature authorized the Department of Human Services to develop treatment foster care standards.[256] The agency developed a work group that ended up with 32 members to assist in writing proposed rules. The work group used 1995 program standards developed by the Foster Family-based Treatment Association[257] and ultimately came up with the rules in this section. The first rule, part 2960.3300, makes it clear that a foster family setting that offers treatment foster care services must meet the requirements of the regular foster family rules (parts 2960.3000 to 2960.3100) as well as the requirements of the special rules in parts 2960.3300 to 2960.3340. Statements such as this are helpful to readers who do not work with these rules every day. The Department is encouraged to consider similar "guidepost" additions to other parts of these rules so that non-experts will be certain of the departments' intentions.

2960.3310 – Admission, Treatment and Discharge

133. As a general matter, there was concern expressed concerning the cost of admission and treatment for treatment foster care standards.[258] There is a desire to attempt to qualify these programs as eligible for Medicaid funding, but to do so would require delay in the implementation of these rules. Mary Regan indicated that she was hoping to have legislation adopted this year which would direct the Department to examine how to include treatment foster care under the Medicaid program. She estimated it might take 18 months to two years to develop standards that would allow for Medicaid eligibility. She thought that as a matter of best practices, the effective date of these treatment foster care rules should be delayed until the Department is able to prepare additional rules (relating to licensing of private foster care agencies) that would be necessary to secure Medicaid funding. On the other hand, Ms. Regan advocates delaying most of the rules until the next biennium (2006-2007) in hopes that the financial situation for the state, counties, and providers will be brighter. But she stated "given the unique nature of the section on foster and treatment foster care, we would recommend that implementation of that section proceed separately."[259] The Department's response to the proposal to delay some of the rules, but proceed with the foster care and treatment foster care rules, will be discussed in the final findings of this report.

2960.3320 – Treatment Foster Care Requirements

134. There is a typographical error in subpart 1 of this proposed rule.[260] The rule should read:

In addition to the qualifications in parts 2960.3000 to 2960.3100, treatment foster parents must:

135. There is very little in this section of rules (regarding treatment foster care) that regulates substitute caregivers or respite caregivers. The only reference is in part 2960.3310, subpart 3(C), which requires that their use be part of each child's treatment plan. Therefore, absent any modifications in the treatment plan, the qualifications and restrictions on the use of such caregivers are the same as those contained in part 2960.3090. Suzanne Douglas, of Hennepin County, suggested that one provider should be in the home at all times when children are there, rather than having regular substitutes or sending the child out for daycare. The departments did not support the proposal, reasoning that treatment foster parents may need to have someone take care of the child when they are not able to do so.[261] The Administrative Law Judge finds that the departments have adequately supported its proposal. Foster parents providing specialized treatment need to use substitutes and need time off as much as, if not more than, traditional foster parents. The safeguards in part 2960.3090 are adequate to protect the children, and the Administrative Law Judge finds that the departments have justified its proposal without change.

136. Subpart 2. Admission. Subpart 2.A. requires the recommendation of "a licensed professional who is qualified to direct treatment and is familiar with the child's individual needs." Subpart 2B. talks about the treatment team including "a licensed professional directing treatment." The next subpart, subpart 3D again refers to "a licensed professional directing treatment, who must be familiar with the child's individual needs." Northwood Children's Services stated that there is an acute shortage of licensed clinical social workers, particularly in rural Minnesota, and suggested that the language be amended to include "mental health professionals," a term used in part 2960.0020, subpart 48, which refers, in turn, to Minn. Stat. § 245.4871, subd. 27. That statute provides a broader category of people, including persons with a masters degree in the behavioral sciences or related fields who has at least 4000 hours of post-master's supervised experience in the delivery of clinical services in the treatment of emotional disturbances. Similar concerns concerning the availability of persons to serve in treatment foster care settings were voiced by Cheryl Smatana McHugh at Therapeutic Services Agency, Mary Regan of MCCCA (who also identified out-state difficulties), and Tom Keaveney of PATH.

137. As noted earlier, the department proposed a change to its definition of "licensed professional" in part 2960.3010 so that the term would include "mental health professionals." That change should satisfy the concerns raised about the availability of personnel, particularly in rural areas. No further changes are needed to 2960.3320 to reflect that concern.

138. Subpart 3. Treatment Plan. The proposed rule requires that a child's treatment plan be developed within 10 days of admission. Comments were received indicating that that is too short a time, and that the rule ought to allow up to 30 days.[262] They noted that foster parents who specialize in treatment foster care request, and

usually require, much more than 10 days just to get to know the child. Just commencing a support team meeting within 10 days works, but only in some cases. The departments responded that the treatment plan serves as a guide for the foster family, and that the child should not wait for an extended period of time to have his or her needs properly addressed. The departments admit that a treatment plan must change over time, and is never "final." They imply that changes can and should be made beyond whatever document is prepared in the first ten days. The Administrative Law Judge finds that the departments have justified the reasonableness of its 10-day rule.

2960.3320 – Treatment Foster Care Requirements.

139. Subpart 1. Provider Qualifications. The proposed rule sets forth a number of qualifications for treatment foster parents, most of which received no comment. However, the first one is that treatment foster parents must have previously been licensed as a foster parent for at least two years or have equivalent experience. This was opposed by Therapeutic Services Agency, and Suzanne Douglas of Hennepin County. Therapeutic Services Agency believed that the rule was too strict and would exclude "some of the most therapeutic and effective foster parents [who] have been brand new folks with a passion for kids and eagerness to learn and grow in their foster parenting."[263] Hennepin County, on the other hand, suggested that the proposed rule was not strict enough because it did not have enough restrictions on the years of work with children or time licensed. In the SONAR, the departments explain that treatment foster care parents are required to have additional qualifications over those demanded of regular foster care parents because of the increased demands placed upon the treatment foster parents. The Administrative Law Judge finds that the agency has justified its position. While the experience of Ms. McHugh from Therapeutic Services Agency is no doubt true, on balance it makes sense to require some experience with the foster care concept before becoming a treatment foster care provider.

2960.3330 – Treatment Foster Training

140. Subpart 1. Initial Training. The proposed rule required a professional development plan, 30 hours of primary skill development training prior to accepting a treatment foster care placement, and first aid and cardiopulmonary resuscitation certification. One commentator noted that in her 20 plus years of experience, she had never known a situation where resuscitation was needed. She pointed out that this certification was very time consuming, expensive, and required routine continuing education to maintain a certification. She suggested that given limited funding, there were greater priorities than this.[264] In response, the departments agreed to delete this required item because of the cost and time, but noted that the specific training plan for a foster parent could include this requirement if it were needed to appropriately care for a child.

141. The authors of the previous comment also commented on the requirement that there be 30 hours of initial training prior to the placement of a child. They argued that 30 hours was too expensive and would deter potential foster parents. Ms. McHugh also suggested that her experience showed that too much pre-service training was a waste, and the parents would have been better served with some pre-service, but more post placement, training that could be more case specific and more readily applicable to their specific needs. Ms. Pangerl suggested the rule be replaced with a requirement for 18 hours within the first year of licensure (presumably post-placement). The departments did not respond to these criticisms, but in the SONAR they argue that additional needs of treatment foster children require that the parents have more skills and knowledge than regular foster parents. The 1995 Program Standards for Treatment Foster Care which served as the basis for these rules does recommend 30 hours of pre-placement training. The Administrative Law Judge finds that the departments have a rational basis for their requirement, and it may be adopted. The entire subpart, less the requirement for first aid and resuscitation which the departments have proposed to delete, has been justified as reasonable, and may be adopted, as amended.

142. Subpart 2. Annual Training Required. The departments have proposed 18 hours of annual training, which can be in various formats, including in-home training, group presentations, or in-service training approved by the placing or licensing agency. The departments note, in the SONAR, that the training requirements are consistent with those recommended in the 1995 Program Standards. Complaints were voiced, however, based on cost. PATH, for example, estimated this would add $80,000 in annual costs for the roughly 400 youth in treatment foster care with private agencies in Minnesota who are served by PATH.[265] Given the nature of the children who are served by treatment foster care, and given the variety of types of training that the departments are willing to accept, the Administrative Law Judge believes that the departments have demonstrated that their 18 hour annual training requirement is both needed and reasonable.

2960.3340 – Treatment Foster Home Capacity

143. Although this rule is divided into a number of subparts, it should be viewed as a whole in determining whether or not it has been justified as reasonable. The rule basically provides that there shall not be more than two treatment foster care children placed in one home, unless a variance has been granted. A variance may be granted if a number of specified conditions are met. This follows the recommendations in the 1995 Program Standards. Nonetheless, criticisms were raised, primarily based on cost. One commentator urged that the maximum number of children be changed from two to six, making the following observation:

> The current version is too restrictive. The number of children foster parents are able to work with effectively varies significantly. It is neither financially or therapeutically viable to restrict the number of children in placement with treatment foster care needs to two. Research shows treatment families work effectively with as many as six children in their care. Some children actually do better when placed with more children. The skills, education, talents and support systems of the foster parents must be adequate to meet the needs of the children. The presenting conditions of the children must be matched with those skills and supports. Limiting the number of children in placement to two is unnecessarily prohibitive and ineffectual.[266]

144. Another commentator noted that a husband/wife team, with no other children in the home, may be able to meet the needs of three SED children in their home. She thought that there should be more flexibility so that factors such as family membership, and number of family members at home, and availability of foster parents, could be considered.[267] While there is no real data in the record, it appears to the Administrative Law Judge that variances are commonly granted in this area. Subpart 3 of the proposed rule sets forth standards for variances. Factors such as the need to place a sibling group together or return of a child to foster parents with which the child has previously been placed, are two of the standards. The Department had initially proposed an additional standard, "to keep the child in the child's home community," but, a number of persons, including Suzanne Douglas of Hennepin County criticized it as being inconsistent with the concept of a treatment foster home.[268] The Department agreed to delete that item.[269]

145. In response to criticisms about the capacity limitation of two, the Department pointed out that actual data from August 2002 demonstrates that there were 722 Minnesota families licensed as foster parents by private child-placing agencies that offer a treatment foster care program. Those 722 homes provide a total of 1,925 beds. The average number of beds, per home, is thus above two (it is actually 2.66). This occurs because of variances, and because of turnover. The departments also focused on the Program Standards for Treatment Foster Care noted earlier, and agreed to remove one of the variance items which had been criticized. The Administrative Law Judge concludes that the departments do have a rational basis for the proposed capacity limitations and variance standards. The rule may be adopted, with the deletion recommended by the departments. The deletion does not cause the rule to be substantially different from its original version.

REPEALER AND EFFECTIVE DATE

146. Throughout the written comments and the presentations at the hearings, there was an oft-voiced concern about the inability of counties, agencies and licensed providers to adjust to these new rules by the proposed effective date of January 1, 2004, in light of the fiscal problems facing the state and those who depend on state funding. The only real exception to this was the concern of Mary Regan, of MCCCA, to the effect that the foster care rule should not be held up too long because the new rule could result in more federal funding made available to pay for the care of children in foster homes which could be identified as treatment foster homes. The departments responded to these concerns by agreeing to delay the effective date of most of the rule to July 1, 2005. Only the proposed foster rules, parts 2960.3000 to 2960.3340, would take effect on January 1, 2004.[270] The departments justified this delay on the likelihood of budgetary restrictions during the coming biennium and the strain on the license holders (and others) from imposing these rules during a time of fiscal austerity. Delaying the effective date of the rules until July 1, 2005 alleviates that strain, and allows programs to focus on adjusting to the new budgetary climate while being able to gradually change their operations to conform to the new rule. Based on all of the comments in the record, the Administrative Law Judge concludes that the proposed delay in the effective date of all but the foster care rules has been justified as needed and reasonable. It does not make the rule substantially different from the original proposal to the extent that any further procedures are necessary. The proposed change in the repealer and effective date may be adopted.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The departments gave proper notice of the hearings in this matter.

2. The departments have fulfilled the procedural requirements of Minn. Stat. § 14.14, and all of the other procedural requirements of law or rule.

3. The departments have demonstrated their statutory authority to adopt the proposed rules and have fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii), except as noted at Findings of Fact No. 64 and 118.

4. The departments have documented the need for and reasonableness of their proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii), except as noted at Findings of Fact Nos. 64 and 77.

5. The various changes to the rules which were suggested by the departments after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published, within the meaning of Minn. Stat. §§ 14.05, subd. 2 and 14.15, subd. 3.

6. The Administrative Law Judge has suggested action to correct the defects cited in Conclusions No. 4 and 5 as noted in Findings of Fact No. 64, 77 and 118.

7. Due to Conclusions No. 4 and 5 this Report has been submitted to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 3 and 4.

8. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

9. A finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the departments from further modification of the proposed rules based upon an examination of the public comments, provided that the rule as finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the proposed rules be adopted, except as specifically otherwise noted above.

Dated this 16th day of April 2003.

S/ Allan W. Klein
ALLAN W. KLEIN
Administrative Law Judge

Reported: Transcript Prepared by Angela D. Sauro and Ann Marie Holland, Kirby A. Kennedy & Assoc.

NOTICE

The departments must wait at least five working days before taking any final action on the rules. During that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minnesota Rules, part 1400.2100, and Minnesota Statutes, section 14.15, subdivision 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings of this Report, he will advise the departments of actions which will correct the defects. If the departments elect to make any other changes to

the rule, they must resubmit the rule to the Chief Administrative Law Judge for a review of those changes before adopting the rule.

However, in those instances where the Chief Administrative Law Judge identifies defects which relate to the issues of need or reasonableness, the departments may either follow the Chief Administrative Law Judge's suggested actions to cure the defects or, in the alternative, if the departments do not elect to follow the suggested actions, they must submit the proposed rule to the Legislative Coordinating Committee, and the House of Representatives and Senate Policy Committees with primary jurisdiction over state governmental operations for the advice of the Commission and Committees.

When the rule is filed with the Secretary of State, the departments must give notice on the day of filing to all persons who requested that they be informed of the filing.

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[1] Minn. Stat. §§ 14.131 through 14.20 (2002).
[2] Laws of Minnesota 1994, Chapter 576, Section 62.
[3] Laws of Minnesota 1995, Chapter 226, Article 3.
[4] Department of Human Services Exhibits, Ex. 1.
[5] *Id*
[6] Laws of Minnesota 1999, Chapter 216, Article VI, Section 7. See Parts 2960.3300 through 2960.3340
[7] Ex. 2.
[8] Ex. 10.
[9] *Id.*
[10] Ex. 3.
[11] Ex. 5.
[12] Ex. 4.
[13] Ex. 4.
[14] Exs. 7 and 8.
[15] Ex. 9.
[16] Ex. 13.
[17] Ex. 6.
[18] Ex. 1.
[19] Ex. 2.
[20] Ex. 3.
[21] Ex. 4.
[22] Ex. 5.
[23] Ex. 6.
[24] Ex. 7.
[25] Ex. 8.
[26] Ex. 9.
[27] Ex. 10.
[28] Ex. 11.
[29] Ex. 12. The comments had been previously delivered to Department of Human Service on January 28, 2003.
[30] Ex. 13.
[31] Ex. 3., SONAR, at 1.
[32] Ex. 3., SONAR, p. 4.
[33] *Id.*

[34] Ex. 3., SONAR, pp. 4-5.
[35] Ex. 3, SONAR, pp. 5-6.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] Ex. 3, SONAR, pp. 7-18.
[41] Ex. 3, SONAR, pp. 18-20.
[42] Ex. 3., SONAR, p. 20.
[43] Ex. 3., SONAR, p. 21.
[44] *Mammenga v. Division of Human Services*, 442 N.W.2d 786 (Minn. 1989); *Manufactured Housing Institute v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).
[45] *In re Hanson*, 275 N.W.2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 367, 43 N.W.2d 281, 284 (1950).
[46] *Greenhill v. Bailey*, 519 F. 2d 5, 19 (8th Cir. 1975).
[47] *Mammenga*, 442 N.W.2d at 789-90; *Broen Memorial Home v. Minnesota Division of Human Services*, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).
[48] *Manufactured Housing Institute*, 347 N.W.2d at 244.
[49] *Federal Security Administrator v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).
[50] Minn. R. 1400.2100.
[51] These changes were available as a Response to Comments, Department of Human Services letter to the Administrative Law Judge dated March 5, 2003 and March 12, 2003. They were posted to both the departments websites, as well as posted on the OAH website.
[52] Minn. Stat. § 14.15, subd. 3.
[53] Minn. Stat. § 14.05, subd. 2.
[54] *Id.* § 14.05, subd. 2.
[55] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 1.
[56] Letter from Robert Klukas, dated March 5, 2003, at p. 2.
[57] Letter from Jon Brandt, Director of Mapletree, dated February 12, 2003, at p. 3.
[58] Letter from Robert Klukas, dated March 5, 2003, at p. 2.
[59] Letter from Jon Brandt, Director of Mapletree, dated February 12, 2003, at p. 5.

[60] Letter from Robert Klukas, dated March 5, 2003, at p. 3.
[61] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 1.
[62] Letter from Robert Klukas, dated March 5, 2003, at p. 3.
[63] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 1.
[64] Letter from Robert Klukas, dated March 5, 2003, at p. 3.
[65] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 1.
[66] Letter from Robert Klukas, dated March 5, 2003, at p. 4.
[67] Letter from Jon Brandt, Director of Mapletree, dated February 12, 2003, at p. 9.
[68] SONAR, at 31

[69] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 1.
[70] Letter from Robert Klukas, dated March 5, 2003, at p. 4.
[71] Letter from Jon Brandt, Director of Mapletree, dated February 12, 2003, at p. 2.
[72] Letter from Robert Klukas, dated March 5, 2003, at p. 4.
[73] Minn. Stat. § 245A.04, subd. 11(b), cited by Mr. Brandt, refers to facilities serving persons "through the age of 19." But section 256E.115 establishes a program relating to transitional housing for "targeted youth" that serves children between 16 and 21. And Section 260B.193, subd. 5 allows court jurisdiction of an "extended jurisdiction juvenile" until the 21st birthday. But section 260B.198, subd. 12 prohibits a

person who has reached the age of 20 from being kept in a residential facility licensed by the Commissioner of Corrections together with persons under the age of 20.
[74] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 1.
[75] Letter from Robert Klukas, dated March 5, 2003, at p. 4.

[76] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 1.
[77] Letter from Robert Klukas, dated March 5, 2003, at p. 5.
[78] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 1.
[79] Letter from Robert Klukas, dated March 5, 2003, at p. 5.
[80] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 1.
[81] Letter from Robert Klukas, dated March 5, 2003, at p. 5.
[82] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 1.
[83] Letter from Robert Klukas, dated March 5, 2003, at p. 5.
[84] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 1-2.
[85] Letter from Robert Klukas, dated March 5, 2003, at p. 6.
[86] Letter from Larry Molstad, on behalf of Hennepin County Children, Family & Adult Services Department, dated March 3, 2003.
[87] Letter from Robert Klukas, dated March 12, 2003, at p. 1.
[88] Letter from Larry Molstad, on behalf of Hennepin County Children, Family & Adult Services Department, dated March 3, 2003.
[89] Letter from Robert Klukas, dated March 12, 2003, at p. 1.
[90] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 1.
[91] Letter from Robert Klukas, dated March 5, 2003, at p. 6.
[92] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[93] Letter from Robert Klukas, dated March 5, 2003, at p. 6.
[94] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[95] Letter from Robert Klukas, dated March 5, 2003, at p. 6-7.
[96] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[97] Letter from Robert Klukas, dated March 5, 2003, at p. 7.
[98] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[99] Letter from Robert Klukas, dated March 5, 2003, at p. 7.
[100] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[101] Letter from Robert Klukas, dated March 5, 2003, at p. 7-8.
[102] Letter from Mary Regan, on behalf of the Minnesota Council of Child Caring Agencies, dated February 12, 2003.
[103] Letter from Robert Klukas, dated March 5, 2003, at p. 8.
[104] Letter from Jan Gibson Talbot, President/CEO of Hearthstone of Minnesota, dated January 10, 2003, p. 2.
[105] Letter from Robert Klukas, dated March 5, 2003, at p. 8.
[106] Testimony of Mary Ford, North American Council on Adoptable Children in St. Paul, pp. 53-58.
[107] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[108] SONAR, at 41.
[109] Letter from Robert Klukas, dated March 5, 2003, at p. 8-9.

[110] Letter from Robert Klukas, dated March 5, 2003, at p. 8.
[111] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 2.
[112] Letter from Robert Klukas, dated March 5, 2003, at p. 9.
[113] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 2.
[114] Letter from Robert Klukas, dated March 5, 2003, at p. 9.
[115] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 2.
[116] Letter from Robert Klukas, dated March 5, 2003, at p. 9.
[117] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 2.
[118] Letter from Robert Klukas, dated March 5, 2003, at p. 10.
[119] Letter from Mary Regan, on behalf of the Minnesota Council of Child Caring Agencies, dated February 12, 2003.
[120] Letter from Robert Klukas, dated March 5, 2003, at p. 10.
[121] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 2.
[122] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 2.
[123] Letter from Robert Klukas, dated March 5, 2003, at p. 10.
[124] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 2-3.
[125] Letter from Robert Klukas, dated March 5, 2003, at p. 11.
[126] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 2.
[127] Letter from Robert Klukas, dated March 5, 2003, at p. 11.
[128] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 2.
[129] Letter from Robert Klukas, dated March 5, 2003, at p. 11.
[130] Letter from Jon Brandt, Director of Mapletree, dated February 12, 2003, at p. 6.
[131] Letter from Robert Klukas, dated March 5, 2003, at p. 11-12.
[132] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[133] Letter from Robert Klukas, dated March 5, 2003, at p. 12. See also comments of Larry Ellis at Tr. II, pp. 58-64.
[134] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 2.
[135] Letter from Robert Klukas, dated March 5, 2003, at p. 12.
[136] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 2.
[137] Letter from Robert Klukas, dated March 5, 2003, at p. 12.
[138] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 2. He refers to laws relating to sexually transmitted disease medications as well as birth control pills.
[139] Tr. III at p. 47.
[140] Letter from Jan Gibson Talbot, President/CEO of Hearthstone of Minnesota, dated January 10, 2003, p. 3.
[141] Letter from Robert Klukas, dated March 5, 2003, at p. 13.
[142] Testimony of Dan Saad, Safe Haven for Youth Group Homes, pp. 71-76.
[143] SONAR at
[144] Letter from Robert Klukas, dated March 5, 2003, at p. 13.
[145] Letter from Larry Molstad, on behalf of Hennepin County Children, Family & Adult Services Department, dated March 3, 2003, p. 2.
[146] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 2.

[147] Letter from Robert Klukas, dated March 5, 2003, at p. 14.
[148] SONAR at p. 52.
[149] Letter from Robert Klukas, dated March 12, 2003, at p. 2.
[150] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 2-3.
[151] Letter from Robert Klukas, dated March 5, 2003, at p. 14.
[152] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[153] Letter from Robert Klukas, dated March 5, 2003, at p. 14.
[154] Testimony of Mary Ford, pp. 53-58.
[155] Letter from Robert Klukas, dated March 5, 2003, at p. 14.
[156] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[157] SONAR at 54-55, citing Laws of Minnesota 1995, Chapter 226, Article 3 Section 60, Subd. 2, Clause 2 (vi).
[158] SONAR at 55.
[159] Testimony of Mary Ford, Tr. II at pp. 53-58.
[160] Letter from Robert Klukas, dated March 5, 2003, at p. 15.
[161] Letter from Joe Kroll and Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 3-4.
[162] Letter from Robert Klukas, dated March 5, 2003, at p. 15-16.
[163] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 3.
[164] Letter from Robert Klukas, dated March 5, 2003, at p. 15.
[165] Letter from Jon Brandt, Director of Mapletree, dated February 12, 2003, at p. 7.
[166] Letter from Robert Klukas, dated March 5, 2003, at p. 18.
[167] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 3.
[168] Letter from Robert Klukas, dated March 5, 2003, at p. 16.
[169] Testimony of Mark Campbell, at Tr. II pp. 22-23.
[170] Written Testimony of Gerald W. Von Korff, Attorney at Law, dated February 11, 2003.
[171] Testimony of Rosalie Sundin at Tr. II, p. 35.
[172] Testimony of Esther Tomjanovich, at Tr. II, pp.23-24.
[173] Testimony of Kimberly Greer, at Tr. II, pp. 31-34.
[174] Tr. II at p. 32.
[175] Testimony of Rosaline Sundin, Tr. II, pp. 34-40.
[176] SONAR, at 62
[177] Letter from Robert Klukas, dated March 5, 2003.
[178] Testimony of Mary Regan, MCCCA, Tr. III, pp. 62-63.
[179] Letter from Robert Klukas, dated March 12, 2003.
[180] Testimony of Jay Pepin, Director of Little Sand Group Homes, at Tr. p.40-44.
[181] SONAR, at 63.
[182] Letter from Robert Klukas, dated March 5, 2003, at p. 18.
[183] Letter from Mary Regan, on behalf of the Minnesota Council of Child Caring Agencies, dated February 12, 2003.
[184] Letter from Robert Klukas, dated March 5, 2003, at p. 18.
[185] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 4.
[186] Letter from Robert Klukas, dated March 5, 2003, at p. 18.
[187] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 4.
[188] Letter from Robert Klukas, dated March 5, 2003, at p. 18.
[189] Letter from Mary Ford, on behalf of the North American Council on Adoptable Children, dated February 12, 2003, at p. 4.
[190] Letter from Robert Klukas, dated March 5, 2003, at p. 19.

[191] Letter from Mary Regan, on behalf of the Minnesota Council of Child Caring Agencies, dated February 12, 2003.
[192] Similar language was also proposed by David Compton, of the Leo A. Hoffman Center, at Tr. III, pp. 42-43.
[193] Letter from Robert Klukas, dated March 5, 2003, at p. 19.
[194] Letter from Mary Regan, on behalf of the Minnesota Council of Child Caring Agencies, dated February 12, 2003.
[195] Letter from Robert Klukas, dated March 5, 2003, at p. 19.
[196] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 3.
[197] Letter from Robert Klukas, dated March 5, 2003, at p. 20.
[198] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[199] Tr. III, p. 79.
[200] Letter from Robert Klukas, dated March 5, 2003, at p. 20.
[201] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 3.
[202] Letter from Robert Klukas, dated March 5, 2003, at p. 20.
[203] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[204] SONAR at 79.
[205] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 3.
[206] Letter from Robert Klukas, dated March 5, 2003, at p. 21.
[207] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 3.
[208] Letter from Robert Klukas, dated March 5, 2003, at p. 21.
[209] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 3; Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[210] Letter from Robert Klukas, dated March 5, 2003, at p. 22.
[211] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 3.
[212] Letter from Robert Klukas, dated March 5, 2003, at p. 22.
[213] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 4.
[214] Letter from Robert Klukas, dated March 5, 2003, at p. 23.
[215] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 4.
[216] Letter from Robert Klukas, dated March 5, 2003, at p. 25.
[217] Letter from Gothriel LeFleur, Director of Hennepin County Community Corrections Department, dated February 3, 2003, at p. 4.
[218] Letter from Robert Klukas, dated March 5, 2003, at p. 25.
[219] Letter from Richard Quigley, CEO of Woodland Hills, dated March 4, 2003.
[220] Letter from Robert Klukas, dated March 12, 2003, at p. 3.
[221] Letter from Richard Quigley, CEO of Woodland Hills, dated March 4, 2003.
[222] Letter from Robert Klukas, dated March 12, 2003, at p. 3.
[223] Letter from Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, dated February 12, 2003.
[224] Letter from Robert Klukas, dated March 5, 2003, at p. 26.
[225] SONAR at 157.
[226] Letter from Richard Quigley, CEO of Woodland Hills, dated March 4, 2003.
[227] Letter from Robert Klukas, dated March 12, 2003, at p. 4.
[228] See Laws 1995, Ch. 226, Art. 3., § 60, for reference.
[229] See *Program Standards for Treatment Foster Care*, 1995 FFTA, pp. 10-12.
[230] Letter from Suzanne Douglas dated February 6, 2003 and Tr. I, p. 30.

[231] Letter from Jodie Wentland for nine different county agencies, dated February 24, 2003.
[232] Letter from Robert Klukas, dated March 5, 2003.
[233] Letter from Pam Foss dated February 25, 2003.
[234] Letter from Robert Klukas dated March 12, 2003.
[235] See letters from Robert Klukas dated March 5 (regarding health) and March 12 (regarding fire).
[236] See also SONAR, at p. 173.
[237] At p. 176.
[238] Letter from Suzanne Douglas dated February 6, 2003.
[239] Letter of Jodie Wentland, dated February 24, 2003.
[240] Ramsey County, Tr. 35; Anoka County, Tr. 40; and Olmstead County, Tr. 41.
[241] SONAR, at p. 178.
[242] Letter from Jodie Wentland, dated February 24, 2003.
[243] Letter from Suzanne Douglas, dated February 26, 2003.
[244] Tr. 39-40. This concern about only one parent becoming licensed was echoed by other counties.
[245] Letter from Robert Klukas dated March 5, 2003.
[246] See, for example, letter of Pam Foss, dated February 25, 2003.
[247] Laws of Minnesota 1995, Chapter 226, Article 3, § 60, subd. 2, clause (1), (ii).
[248] Cheryl Smetana McHugh,Thereupic Services Agency.
[249] SONAR, p. 183.
[250] Letter of Suzanne Douglas, of Hennepin County, dated February 6, 2003.
[251] Letter from Suzanne Douglas, Hennepin County, dated February 6, 2003.
[252] All of the foregoing comments come from the testimony of Suzanne Douglas, who stated that she was "representing the counties." This is borne out by subsequent statements from other county representatives who followed her at the hearing. See, generally, Tr. 1, at pp. 28-41.
[253] Letter from Belva Britton-Williams dated March 6, 2003.
[254] Letter from Robert Klukas dated March 12, 2003.
[255] Id., at p. 7.
[256] Laws of Minnesota 1999, Ch. 216, Article 6, Section 7.
[257] Address in SONAR, at p. 188.
[258] See comments of Mary Regan of the Minnesota Council of Childcaring Agencies at Tr. 1, p. 20 and Nancy Noetzelman from Volunteers of America at Tr. 1, p. 25. See also PATH letter of January 28, 2003 regarding costs.
[259] Tr. II, at p. 78 and letter from Mary Regan dated February 12, 2003.
[260] Letter from Robert Klukas dated March 5, 2003.
[261] Letter of Robert Klukas dated March 5, 2003.
[262] Letter from Joan Rebel and Faith Jaspersen, of Family Alternatives, received by email on February 26, 2003.
[263] Letter from Cherly Smetana McHugh, dated March 5, 2003.
[264] Letters from Cheryl Smetana McHugh, and Wendy Rude Pangerl, both of Therapeutic Services Agency, dated March 5, and February 28, 2003, respectively.
[265] Letter from PATH Minnesota Administrative Team, dated January 28, 2003.
[266] Letter from Joan Riebel and Faith Jaspersen, Family Alternatives, dated February 26, 2003.
[267] Letter from Cheryl Smetana McHugh, Therapeutic Services Agency, dated March 5, 2003.
[268] Letter from Suzanne Douglas, Hennepin County, dated February 6, 2003.
[269] Letter from Robert Klukas dated March 5, 2003, at p. 37.
[270] Letter of Robert Klukas, dated March 5, 2003. This major concession by the departments, announced on March 5, may explain the relative lack of comments submitted in the final comment period, which ran from March 5 to March 12.